

***United States Court of Appeals  
for the Second Circuit***



**APPENDIX**





Orig  
75-7177

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**United States Court of Appeals**

FOR THE SECOND CIRCUIT

No. 75-7177

LONG ISLAND LIGHTING COMPANY,

*Plaintiff-Appellant,*

—against—

STANDARD OIL COMPANY OF CALIFORNIA, TEXACO INC., MOBIL  
OIL CORPORATION, CHEVRON OIL TRADING COMPANY and  
TEXACO OVERSEAS PETROLEUM COMPANY,

*Defendants-Appellees.*

CONSOLIDATED EDISON COMPANY OF NEW YORK, INC.,

*Plaintiff-Appellant,*

—against—

STANDARD OIL COMPANY OF CALIFORNIA, TEXACO INC., MOBIL  
OIL CORPORATION, CHEVRON OIL TRADING COMPANY and  
TEXACO OVERSEAS PETROLEUM COMPANY,

*Defendants-Appellees.*

APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE  
SOUTHERN DISTRICT OF NEW YORK

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**JOINT APPENDIX**

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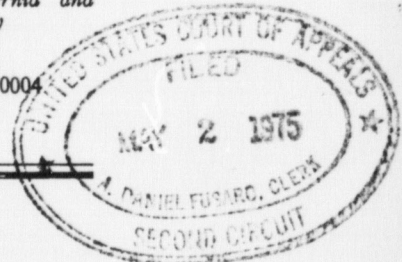
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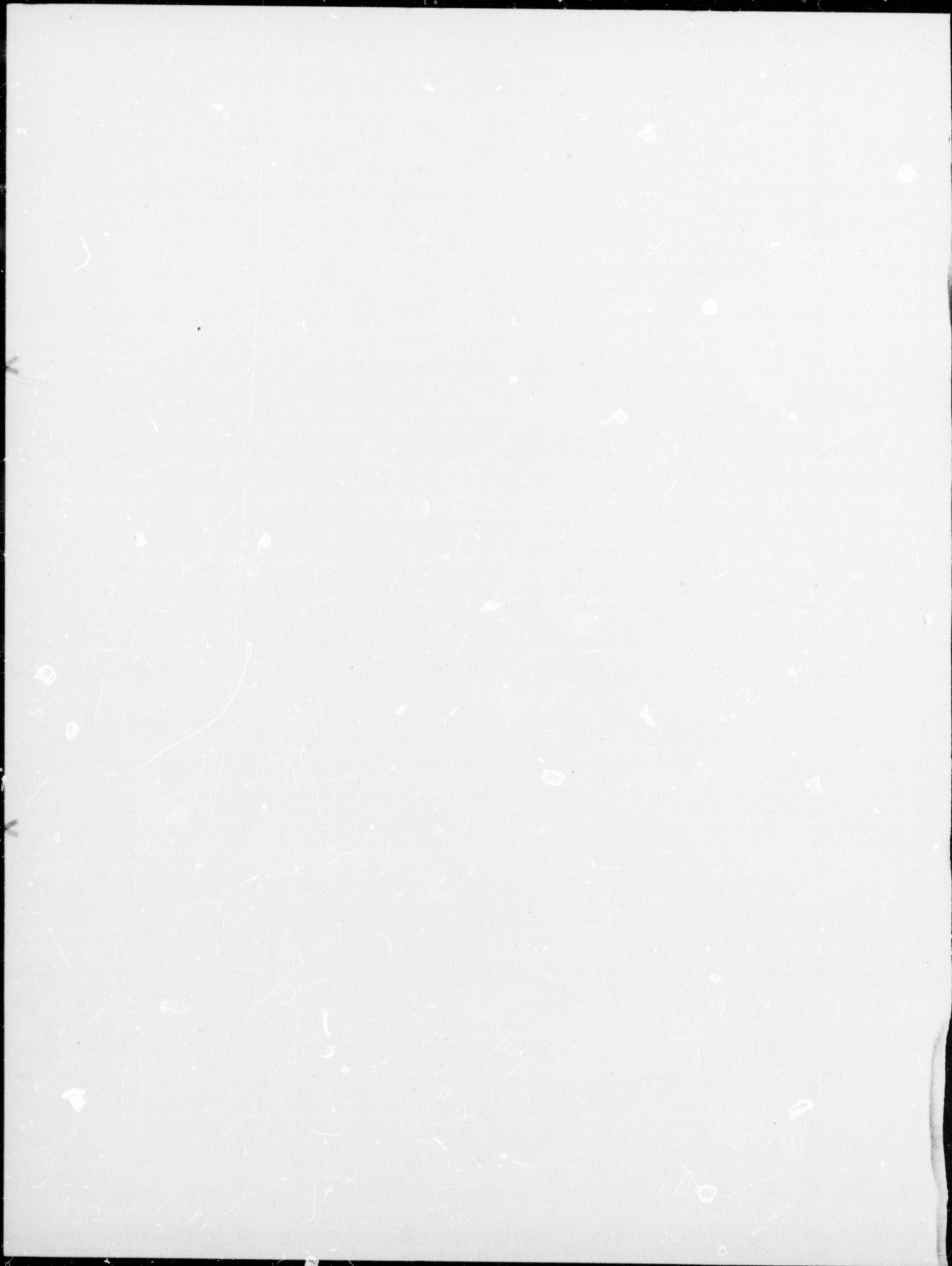


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Relevant Docket Entries  
LILCO v. SOCAL et al.

United States District Court

SOUTHERN DISTRICT OF NEW YORK

74 Civ. 2233

LONG ISLAND LIGHTING COMPANY,

*Plaintiff,*

—against—

STANDARD OIL COMPANY OF CALIFORNIA, TEXACO INC.,  
MOBIL OIL CORPORATION, CHEVRON OIL TRADING COM-  
PANY and TEXACO OVERSEAS PETROLEUM COMPANY,  
*Defendants.*

<u>Date</u>	<u>Proceedings</u>
5-22-74	Filed Complaint, issued summons.
6-12-74	Filed Answer and Counterclaim of Deft. Texaco Overseas Petroleum Co.
6-12-74	Filed Answer (Texaco Inc.).
8-2-74	Filed Pltffs. Notice of Motion and Supporting affidavit. Re: Consolidate. (Memo Endorsed 8/23/74)
8-13-74	Filed Deft. Mobil Oil Corp. Notice of Motion and Supporting affidavit. Re: Strike first and second claims of Lilco's complaint and first Claim of Con Ed's complaint.
8-22-74	Before Wyatt, J.—Pre-trial Conference held. John Doe's are stricken without prejudice to add at a later time.
9-17-74	Filed Answer of Deft. Standard Oil Company of California.
9-17-74	Filed Answer of Deft. Chevron Oil Trading Company.
11-4-74	Filed Defts. Notice of Motion to dismiss Anti-trust claims.

*Relevant Docket Entries*  
*LILCO v. SOCAL et al.*

<u>Date</u>	<u>Proceedings</u>
11-6-74	Filed Defts. Standard Oil Co. of Calif. and Chevron Oil Trading Co. Notice of motion to dismiss pursuant to Rule 12(c) F.R.C.P.
1-8-75	Filed Order that the affidavit of Asa D. Sokolow, sworn to 12/20/74, all Exhibits except Exhibits 1, 2, 3, 34, 35, 37, 57, 62, 63 and 64 and Pltffs. Memorandum in Opposition to the Motions of defts. to Dismiss the Antitrust Claims of the Complaints are to remain sealed and kept in strict custody of this court to be opened only by further order of this Court upon 10 days notice of the parties. So Ordered Wyatt J.
2-27-75	Filed Opinion #41963. Ordered Motion is granted. The Clerk is directed to make entry of separate judgments dismissing the first and second claims of the complaint in 74 Civ. 2233 and the first claim in the action 74 Civ. 2645 for failure to state a claim upon which relief can be granted. So Ordered Wyatt J.
3-5-75	Filed Memo End. on motion dtd. 8/13/74. Motion of the order with Memorandum opinion filed on 2/27/75 the within motion is denied as moot. So Ordered Wyatt J.
3-5-75	Filed Memo End. on motion dtd. 11/6/74. In view of the order with Memorandum opinion filed on 2/27/75 the motion is denied as moot. So Ordered Wyatt J.
3-5-75	Filed Judgment. Ordered that dfts. Standard Oil Co. of Calif., Texaco Inc., Mobil Oil Corp., Chevron Oil Trading Co. and Texaco Overseas Petroleum Co. have judgment against plttf. dismissing the first and second claim of the complaint. Clerk Approved Wyatt J. 3/5/74 [sic.] Ent. 3/6/75.
2-11-75	Filed Pltffs. Notice of Appeal from Judgment dtd. 3/5/75.



Relevant Docket Entries  
CON EDISON v. SOCAL et al.

United States District Court

SOUTHERN DISTRICT OF NEW YORK

74 Civ. 2645

CONSOLIDATED EDISON COMPANY OF NEW YORK, INC.,  
*Plaintiff,*

—against—

STANDARD OIL COMPANY OF CALIFORNIA, TEXACO INC.,  
MOBIL OIL CORPORATION, CHEVRON OIL TRADING COM-  
PANY and TEXACO OVERSEAS PETROLEUM COMPANY,  
*Defendants.*

<u>Date</u>	<u>Proceedings</u>
6-20-74	Filed complaint and issued summons.
7-11-74	Filed Deft. Texaco Overseas Petroleum Co. Answer and Counterclaim.
7-11-74	Filed Answer (Texaco Inc.).
8-13-74	Filed Deft. Mobil Oil Corp. Notice of Motion and Supporting affidavit. Re: Strike first and second claims of Lilco's Complaint and first claim of Con. Ed's Complaint.
8-22-74	Before Wyatt, J.—Pre-trial Conference held. John Doe's are stricken as defts. without prejudice to add at a later time.
9-17-74	Filed Answer of Deft. Standard Oil Company of California.
9-17-74	Filed Answer of Deft. Chevron Oil Trading Company.
2-27-75	Filed Opinion #41963. Ordered Motion is granted. The Clerk is directed to make entry of separate judgments dismissing the first and second claims of the complaint in 74 Civ. 2233 and first claim in the action 74 Civ. 2645 for failure to state a claim upon which relief can be granted. So Ordered Wyatt J.
3-5-75	Filed Memo. End. on motion dtd. 8/13/74. Motion of the order with Memorandum opinion filed on 2/27/75 the within motion is denied as moot. So Ordered Wyatt J.
3-5-75	Filed Judgment. Ordered that defts. Standard Oil Co. of Calif., Texaco Inc., Mobil Oil Corp., Chevron Oil Trading Co., and Texaco Overseas Petroleum Co., have judgment against plttf. dismissing the first claim of the complaint. Clerk, Approved Wyatt J. Entered 3/6/75.
3-11-75	Filed Pltffs. Notice of Appeal from the Judgment dtd. 3/5/75.



LILCO Complaint

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**United States District Court**

SOUTHERN DISTRICT OF NEW YORK

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CIVIL ACTION No.

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LONG ISLAND LIGHTING COMPANY,  
*Plaintiff,*  
—against—

STANDARD OIL COMPANY OF CALIFORNIA,  
TEXACO INC., MOBIL OIL CORPORATION,  
CHEVRON OIL TRADING COMPANY, TEXACO  
OVERSEAS PETROLEUM COMPANY and JOHN  
DOES 1 through 10,  
*Defendants.*

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**COMPLAINT**

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Dated: New York, New York  
May 22, 1974

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**United States District Court**  
SOUTHERN DISTRICT OF NEW YORK

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LONG ISLAND LIGHTING COMPANY,

*Plaintiff,*

*—against—*

STANDARD OIL COMPANY OF CALIFORNIA, TEXACO INC.,  
MOBIL OIL CORPORATION, CHEVRON OIL TRADING COM-  
PANY, TEXACO OVERSEAS PETROLEUM COMPANY and  
JOHN DOES 1 THROUGH 10,

*Defendants.*

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**COMPLAINT**

Plaintiff, Long Island Lighting Company (LILCO),  
by its attorneys Rosenman Colin Kaye Petschek Freund &  
Emil, for its complaint herein alleges as follows:

**JURISDICTION AND VENUE**

1. The FIRST and SECOND claims for relief of this complaint, directed against all defendants, are instituted pursuant to Sections 4 and 16 of the Act of Congress of October 15, 1914 (15 U. S. C. §§ 15 and 26 (1970)) commonly known as the Clayton Act, and arise under Sections 1 and 2 of the Act of Congress of July 2, 1890, as amended (15 U. S. C. §§ 1 and 2 (1970)), commonly known as the Sherman Act. Jurisdiction of this Court is invoked pursuant to the provisions of 28 U. S. C. § 1337 (1970). Venue of the action in this Court is proper pursuant to the provisions



of 15 U. S. C. §§ 15 and 22 (1970). Defendants Standard Oil Company of California (SOCAL), Texaco Inc. (TEXACO), Mobil Oil Corporation (MOBIL), Chevron Oil Trading Company and Texaco Overseas Petroleum Company, are each doing business and are found in the Southern District of New York. The acts and practices hereinafter described occurred in and affect commerce among the States and between the United States and foreign nations.

2. Jurisdiction of the THIRD claim for relief brought by LILCO against SOCAL is founded upon diversity of citizenship under the provisions of 28 U. S. C. § 1332 (1970) and on principles of pendent jurisdiction. LILCO is a gas and electric corporation organized and existing under the laws of the State of New York, with its principal place of business at 250 Old Country Road, Mineola, New York. SOCAL is a corporation organized and existing under the laws of the State of Delaware, with its principal place of business at the Standard Oil Building, 225 Bush Street, San Francisco, California. The amount in controversy exceeds the sum of \$10,000, exclusive of interest and costs.

#### THE PARTIES

3. At all times hereinafter mentioned, LILCO has been a domestic corporation, duly organized and existing under and by virtue of the Transportation Corporations Law of the State of New York, and has been a gas and electric corporation as defined in subdivisions 11 and 13 of Section 11 of the Public Service Law of the State of New York and as such, generates and distributes electricity for residential, commercial and industrial use in Nassau and Suffolk Counties and in part of Queens County. At all times hereinafter mentioned, LILCO, pursuant to the Public Service Law of the State of New York, has been

subject to the jurisdiction of the Public Service Commission of the State of New York as to practically all of its operations, but particularly with regard to the reasonableness of its rates and charges for providing electric service to its customers.

4. SOCAL is the fifth largest petroleum company and the tenth largest corporation in the United States, with assets in 1973 in excess of \$9.0 billion. It reported revenue in 1973 of \$8.9 billion and net income of \$843.6 million. In the first quarter of 1974 it reported a net income of \$293 million on revenue of \$3.9 billion. SOCAL is engaged on a world-wide basis in the exploration for, and production, transportation, refining, distribution and marketing of petroleum and petroleum products.

5. Chevron Oil Trading Company is a corporation organized and existing under the laws of the State of Delaware, with an office and place of business at 30 Rockefeller Plaza, New York, New York. It is a wholly owned subsidiary of SOCAL. Hereinafter, unless otherwise stated, reference to SOCAL shall include reference to Chevron Oil Trading Company.

6. TEXACO is a corporation organized and existing under the laws of the State of Delaware, with its principal place of business at 135 East 42nd Street, New York, New York. TEXACO is the second largest petroleum company and the third largest corporation in the United States, with assets in 1973 in excess of \$13.5 billion. It reported revenue in 1973 of \$11.4 billion and net income of \$1.3 billion. In the first quarter of 1974, it reported net income of \$589.4 million on revenues of \$4.9 billion. TEXACO is engaged on a world-wide basis in the exploration for, and production, transportation, refining, distribution and marketing of petroleum and petroleum products.



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as the "Caltex" group, which group constitutes an integrated organization for the exploration for, and production, transportation, refining and marketing of crude oil and products thereof, and is engaged in such operations in the Middle East, Far East, Africa and Australasia.

11. ARAMCO—Arabian-American Oil Company. ARAMCO is a company engaged in the exploration for and the production, refining and transportation of crude oil within Saudi Arabia, operating under a concession granted by the Government of Saudi Arabia. SOCAL, TEXACO and EXXON Corporation (formerly Standard Oil Company of New Jersey) each owned 30% of ARAMCO and MOBIL owned the remaining 10%. On December 20, 1972 the four partners reached agreement with the Government of Saudi Arabia whereby, effective January 1, 1973, the Government of Saudi Arabia became a 25% owner in ARAMCO and the interests of TEXACO, SOCAL and EXXON were reduced to 22½% each and the interest of MOBIL to 7½%.

12. BORCO—Bahama Oil Refining Company. BORCO is a Bahamian refining company owned 65% by New England Petroleum Corporation and 35% by SOCAL.

13. HOST COUNTRY is a country other than the United States in which an oil producing company operates.

14. NEPCO—New England Petroleum Corporation. NEPCO is a New York corporation with its principal place of business at 825 Third Avenue, New York, New York. NEPCO is one of the largest independent importers, refiners, and distributors of petroleum products in the United States, with revenues in 1973 of \$600 million. NEPCO services accounts throughout the East Coast of the United States.

15. NOC—Libyan National Oil Company. NOC is the Libyan government-owned oil corporation. It is engaged in the marketing of oil produced in Libya and belonging to the Government of Libya.

16. OPEC—Organization of Petroleum Exporting Countries. OPEC is an organization of certain Asian, African and Latin American countries, which account for the bulk of the known crude oil reserves in the world. OPEC includes all major Persian Gulf and North African crude oil producing countries, including Libya and Saudi Arabia.

17. PERSIAN GULF area is the geographic area including and surrounding the Persian Gulf. Countries in the area include: Iran, Iraq, Kuwait, Saudi Arabia, Qatar, Bahrain, United Arab Emirates and Oman.

18. CRUDE OIL is unrefined oil. In its crude state oil can contain various percentages of sulphur.

19. DISTILLATE OIL (No. 2) is a product of crude oil refined in such a way as to be suitable for use as a home heating oil. Utilities, including LILCO, use distillate oil for firing relatively small, peak-load gas turbine electric generating units.

20. RESIDUAL OIL (No. 6) is that portion of the crude oil that remains after completion of the refining process, during which various petroleum products are extracted from the crude oil. Residual oil is used by utilities, including LILCO, as fuel in steam turbine electric generating units, which are the large, primary generating units which account for the greatest part of oil burned by utilities.



21. LOW SULPHUR, as used in this complaint, describes crude, distillate or residual oil with sulphur content of 0.3% or less.

**FIRST CLAIM FOR RELIEF  
AGAINST ALL DEFENDANTS**

22. Beginning on or before January, 1971, and during all times thereafter, the named defendants and JOHN DOES 1 through 10 have combined and conspired unlawfully to restrain and monopolize trade and commerce, and have in fact unlawfully restrained and monopolized trade and commerce, in low sulphur oil to be imported into the East Coast of the United States. A major objective of the conspiracy was and is to protect the monopoly interests of the defendants and others in the Persian Gulf area. To carry out the conspiracy and to achieve their objectives, the defendants agreed to implement and did implement a campaign and plan of action hereinafter set forth, with full knowledge that the implementation of said plan would materially damage LILCO and jeopardize the supply of electricity to consumers on the East Coast of the United States.

23. Defendants aggressively and coercively carried out such campaign and plan of action by means of the measures hereinafter set forth, among others. All such acts and practices were intended by defendants to be, and were in fact, in furtherance of the aforesaid conspiracy and have had the effect of substantially restraining trade and preventing competition in the importation of low sulphur oil into the East Coast of the United States.

24. LILCO is the sole supplier of electric power to consumers in most of Nassau and Suffolk Counties and the

Rockaway Peninsula section of Queens County in the State of New York. Under applicable environmental regulations, LILCO is required to burn only low sulphur residual and distillate oil in its plants in Queens and Nassau Counties. In its Suffolk County plants LILCO is also required to use certain amounts of low sulphur oil. At the present time, approximately 36% of LILCO's residual and distillate oil requirements (or approximately 7.5 million barrels of a yearly requirement of 21.0 million barrels) are for low sulphur oil. LILCO first began burning low sulphur oil in October, 1969.

25. Since 1960 NEPCO has been LILCO's sole supplier of its residual oil requirements. The agreement currently in force between NEPCO and LILCO extends through a term ending March 31, 1980 and specifically obligates NEPCO to supply all of LILCO's low sulphur residual oil requirements up to a yearly maximum of 30 million barrels. LILCO was induced to enter into that agreement by the express representation of SOCAL's officers to LILCO's officers that SOCAL, NEPCO's primary supplier of low sulphur crude oil, would guarantee an adequate supply of such crude oil for the duration of the agreement. The existence of the agreement was common knowledge in the petroleum industry.

26. Under this agreement, the price LILCO paid NEPCO for the various grades of residual oil supplied by NEPCO was to be determined by reference to the New York Harbor Cargo price per barrel as published by Humble Oil and Refining Company, a subsidiary of EXXON, a partner of SOCAL, TEXACO and MOBIL in ARAMCO. The agreement further established certain maximum prices for the products to be supplied. Payments under the agreement were to be made 30 days after the presen-



tation of an invoice and a certificate of quantity and quality prepared by NEPCO with respect to each sale.

27. As of August, 1973, SOCAL was NEPCO's primary supplier of low sulphur crude oil. In the early 1960's SOCAL and TEXACO—operating through AMOSEAS—had found a substantial quantity of low sulphur crude oil in Libya. In 1967, NEPCO entered into a long-term agreement with SOCAL under which SOCAL agreed to supply NEPCO with substantially all of SOCAL's share of AMOSEAS' output, to be delivered by SOCAL to the BORCO refinery. As part of the agreement, SOCAL received a 35% interest in the BORCO refinery and consented to guaranty a loan taken by NEPCO, which guaranty provided that in the event of a default by NEPCO in repayment of the loan, NEPCO's 65% interest in the BORCO refinery would pass to SOCAL. The effect of this agreement was to make Libya the major source of supply of low sulphur oil for the East Coast of the United States and, as the situation existed in August, 1973, if that supply were to be interrupted, there would be substantial brownouts or blackouts in the East Coast of the United States.

28. In January, 1971, SOCAL, TEXACO, MOBIL and most other free world oil companies with interests in OPEC countries, formed a committee known as the London Policy Group (LPG) to plan policy with respect to and to bargain jointly with the OPEC countries, including Libya. The members of LPG agreed, among other things: (a) that no member of LPG would reach any agreement with an OPEC country without the consent of all LPG members and (b) that if an OPEC country took any action against any LPG member, *e.g.*, nationalization of all or part of its oil reserves in that country, the other members of LPG

would supply oil to that company, at cost, to the extent of its losses resulting from that action.

29. Negotiations with OPEC countries were carried out jointly by LPG members from the time of LPG's formation until early 1972, when the LPG members whose primary interests were in the Persian Gulf (consisting of SOCAL, TEXACO, MOBIL and the other major petroleum companies, known within LPG as the "chiefs") in effect split from the LPG members whose primary interests were in Libya (mostly the smaller "independent" petroleum companies). Thereafter, in an effort to protect their monopoly interests in the Persian Gulf area, a number of the major petroleum company members of LPG reached agreement with a number of the Persian Gulf host countries. Specifically, SOCAL, TEXACO, MOBIL and EXXON negotiated an agreement with the Government of Saudi Arabia whereby the Government acquired a 25% participation in ARAMCO.

30. In August, 1973, a number of the smaller "independent" petroleum companies, which were operating in Libya and which had only insignificant holdings in the Persian Gulf area, reached an agreement with the Government of Libya. Under this agreement, 51% of all crude oil produced by those companies would belong to NOC and 49% of the crude oil produced would belong to the companies. The companies would have the right to buy back from NOC most or all of the remaining 51%. Although these smaller companies were LPG members, the LPG did not approve such agreement.

31. SOCAL, TEXACO, MOBIL and other major LPG members received similar offers from the Government of Libya for a 51% participation by NOC in their Libyan interests. In their judgment, however, a grant of



a 51% interest in their Libyan holdings would have jeopardized their far more vast and more valuable holdings in the Persian Gulf area, where they had succeeded in negotiating much more favorable agreements, including that with the Government of Saudi Arabia for a 25% participation in ARAMCO. Accordingly, SOCAL, TEXACO, MOBIL and other major LPG members concertedly decided to reject and did reject this proposal of the Libyan Government.

32. In August, 1973, NEPCO learned that its Libyan source of supply was threatened by these events. Therefore, in an effort to protect itself and to insure adequate oil supplies for its customers and the East Coast of the United States, NEPCO proposed to SOCAL that NEPCO purchase either SOCAL's 50% interest in AMOSEAS or all of AMOSEAS. SOCAL rejected NEPCO's offer for the reasons stated in paragraph 31, *supra*.

33. On September 1, 1973, Libya announced that it would nationalize a 51% interest of all companies in Libya that had not previously accepted the 51% participation, including AMOSEAS, other Libyan interests of SOCAL and TEXACO, and the Libyan interests of MOBIL.

34. On September 10, 1973, SOCAL informed NEPCO that the Libyan Government had seized 51% of SOCAL's interest in AMOSEAS, that SOCAL was resisting this takeover, and that as of September 1, 1973, all deliveries of Libyan crude oil by SOCAL were suspended.

35. NEPCO immediately replied, stating that SOCAL's position would violate SOCAL's contractual obligations to NEPCO and reminding SOCAL that 49% of the AMOSEAS-produced crude oil still belonged to SOCAL and TEXACO and that most of the remaining 51% was being offered to SOCAL and TEXACO by NOC

on a buy-back arrangement. SOCAL stood firm and refused to honor its contractual commitment. Not only did SOCAL refuse to deliver to NEPCO any Libyan crude oil, it also refused to provide any replacement oil from its other sources. At the same time, SOCAL withdrew its tankers which, under its agreement with NEPCO, were used to carry the Libyan oil from Libya to the BORCO refinery in the Bahamas. These actions, taken in accord with agreements made among certain LPG members, were designed to protect SOCAL's and TEXACO's interests in the Persian Gulf, including their interests in ARAMCO.

36. Upon the invitation of the Government of Libya, NEPCO opened negotiations with NOC for possible direct purchase from NOC of part of NOC's 51% share of AMOSEAS-produced crude oil. Following SOCAL's announced boycott of NEPCO and its refusal to honor its contract with NEPCO, NEPCO entered into an agreement with NOC for purchase in Libya of the approximate quantity of low sulphur crude oil that SOCAL previously had been supplying. NEPCO's agreement with NOC, however, was at substantially higher prices per barrel and on distinctly less favorable terms. In addition, since SOCAL had withdrawn its tankers, NEPCO had to arrange for and bear the greatly increased cost of transporting the oil from Libya to the BORCO refinery.

37. Thereafter, pursuant to an unlawful conspiracy whose object was to protect their monopoly interest in and virtually complete control over all aspects of the production, transportation, refining and marketing of crude oil in the Persian Gulf area, SOCAL, TEXACO, MOBIL and JOHN DOES 1 through 10, embarked on a course of action designed to prevent NEPCO from dealing with the Libyan Government, from purchasing low sulphur crude oil from



*LILCO Complaint*

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NOC, from transporting such low sulphur crude oil, from refining it and from distributing it to its customers, including LILCO.

38. On or about September 13, 1973, R. G. Weinand, Executive Vice President of NEPCO, received a telephone call from L. W. Folmar, a Vice President of TEXACO and Chairman of the Board of Directors of Texaco Overseas Petroleum Company. Mr. Folmar informed Mr. Weinand that he had heard the NEPCO had put a ship into Libya to lift oil which had been taken from AMOSEAS, that this oil still belonged to TEXACO, and that if NEPCO lifted this oil, TEXACO would pursue all means to prevent its use by NEPCO.

39. Minutes later, D. L. DeBaun, a Vice President of NEPCO received a telephone call from H. A. Navis, a Vice President of SOCAL and an officer of Chevron Oil Trading Company. Using almost the same words as Mr. Folmar, Mr. Navis warned NEPCO not to take any oil from NOC and threatened action to prevent NEPCO from making use of any Libyan oil.

40. On the same day, both TEXACO and SOCAL sent letters to NEPCO restating their position, insisting that the Libyan oil was theirs, and threatening action if NEPCO actually lifted the oil.

41. In spite of the threats by SOCAL and TEXACO, NEPCO did lift the oil which it had purchased from NOC. It was loaded at the instruction of NOC at a terminal in Libya operated by a subsidiary of MOBIL.

42. Thereafter, and pursuant to the conspiracy, SOCAL, TEXACO and MOBIL decided to and did institute

a series of groundless legal actions around the world in an effort to harass NEPCO and to prevent NEPCO from transporting and refining the Libyan oil it had purchased from NOC and from distributing it to its customers, including LILCO.

43. A subsidiary of SOCAL and a subsidiary of TEXACO brought an action in Italy against an Italian refinery which had in its possession certain oil belonging to NEPCO. Although claiming in this action that this "hot oil" was rightfully "its oil", at no time would SOCAL agree to deliver the oil either to NEPCO, as it was obligated to do under its supply agreement with NEPCO, or to any of NEPCO's East Coast customers, including LILCO.

44. MOBIL, a SOCAL and TEXACO partner in ARAMCO but not in AMOSEAS, then brought an action in the Bahamas against a Bahamian subsidiary of NEPCO alleging that the oil NEPCO had purchased from NOC rightfully belonged to MOBIL, notwithstanding the fact that MOBIL did not produce that type of oil in Libya.

45. Concurrently, a third action was brought in the Bahamas by TEXACO against a subsidiary of NEPCO trying to prevent NEPCO from using the oil bought from NOC and lifted in Libya.

46. Despite the efforts of SOCAL, TEXACO and MOBIL, NEPCO succeeded in bring the Libyan oil into the United States and supplying its customers, including LILCO. However, as a result of the actions of SOCAL, TEXACO, MOBIL and JOHN DOES 1 through 10.



the cost per barrel of low sulphur crude oil immediately rose from a pre-September 1, 1973, price of \$3.60 per barrel delivered to the BORCO refinery in the Bahamas to about \$6.80 per barrel, an increase of almost 90%. Thereafter, and as a result of the conspiracy, the price of low sulphur crude oil continued to rise precipitously.

47. This increase in the direct cost per barrel of low sulphur crude oil and the increase in indirect costs to NEPCO resulting from the foregoing acts by SOCAL, TEXACO, MOBIL and JOHN DOES 1 through 10, led NEPCO to seek to increase the price that NEPCO charged LILCO for low sulphur residual oil. Two days after SOCAL had announced its intention not to deliver Libyan crude oil to NEPCO, NEPCO informed LILCO that replacement oil, to the extent available, would henceforth be offered at a price increase of \$3.20 per barrel of low sulphur residual oil on terms of immediate payment. Thereafter, and as a result of the conspiracy, the price charged LILCO by NEPCO for low sulphur residual oil continued to rise precipitously.

48. After notification by NEPCO of its price increase, LILCO tried to obtain low sulphur residual oil from other sources. No member of the LPG submitted an offer.

49. As a result of the foregoing conspiracy, acts and practices, in the period from September 1, 1973 to date, LILCO has suffered substantial damages in the form of greatly increased costs for its low sulphur residual oil requirements. Such damages are continuing.

50. In addition, as a result of the foregoing conspiracy, acts and practices, NEPCO has demanded that LILCO pay

NEPCO on delivery instead of on 30-day terms as provided in the agreement between LILCO and NEPCO. In the period from September 1, 1973 to date, this has resulted in substantially increased interest costs to LILCO. Such damages are continuing.

51. As a result of the foregoing conspiracy, acts and practices, in the period from September 1, 1973 to date, LILCO has been impaired in its ability to conduct normal transactions within the New York Power Pool and within other regional and inter-regional pools and organizations and has lost substantial revenues therefrom. Such damages are continuing.

52. As a result of the foregoing conspiracy, acts and practices, and the threatened loss of its supplies of residual oil, LILCO has thus far had to expend substantial amounts to prepare for conversion of a portion of its oil burning capability to a coal burning capability and LILCO will have to continue to expend substantial sums.

53. As a result of its increased costs resulting from the foregoing conspiracy, acts and practices, LILCO has suffered substantial losses in business from its present consumers and lost present and potential subscribers to several of its electric services. Such damages are continuing.

54. Finally, as a result of the foregoing conspiracy, acts and practices, LILCO has lost good will in its service area and among its customers. In addition, the confidence of the financial community in LILCO has diminished, making investors reluctant to accept LILCO's securities and thus increasing the cost to LILCO of marketing such securi-



ties and of obtaining other forms of financing necessary for LILCO to maintain its financial integrity. LILCO has suffered substantial damages as a result. Such damages are continuing.

55. By virtue of an electric fuel adjustment provision contained in the rate schedule of LILCO and approved by the Public Service Commission of the State of New York, a portion of the fuel price increases referred to in paragraph 49, *supra*, has been borne by LILCO's electric customers. In the event LILCO recovers damages for such increases, such recovery will be refunded to said electric customers in a manner and to the extent approved by the New York Public Service Commission.

56. Unless SOCAL, TEXACO, MOBIL and JOHN DOES 1 through 10 are enjoined from continuing in the illegal and conspiratorial acts and practices described above, LILCO will continue to suffer damages in the form of increased costs, it will continue to bear the risk of possible brownouts or blackouts of its service area due to unavailability of low sulphur residual oil and it will continue to experience erosion of its financial integrity and its ability to obtain financing sufficient to enable it to continue to provide adequate service to the public. It is and will be virtually impossible to ascertain or measure in damages the extent and nature of the injury that will be inflicted upon LILCO and its services as a result of the foregoing, an injury for which LILCO has and will have no adequate remedy at law.

**SECOND CLAIM FOR RELIEF  
AGAINST ALL DEFENDANTS**

57. LILCO repeats and realleges the averments of paragraphs 1, 3 to 48 and 54 to 56 of this complaint.

58. Defendants SOCAL, TEXACO and MOBIL, acting individually and in concert with each other and with JOHN DOES 1 through 10, have monopolized, have attempted to monopolize, and have conspired to monopolize the market in the East Coast of the United States for the production and sale of low sulphur crude oil and all products made therefrom. In furtherance thereof defendants have:

(a) pursued a common course of action designed to secure for themselves and exclude others from access to and ownership of the major sources of supply of crude oil, including low sulphur crude oil;

(b) pursued a common course of action designed to exploit and monopolize among themselves the means of gathering and transporting such crude oil to refineries;

(c) pursued a common course of action designed to retain control among themselves of refinery capacity with the object of limiting the supply and controlling the price of all types of refined petroleum products, including low sulphur distillate and residual oil;

(d) pursued a common course of action designed to maintain control among themselves over the distribution and sale and marketing of all types of refined petroleum products, including low sulphur distillate and residual oil.



59. By means of the foregoing conspiracy, acts and practices, defendants have attempted to achieve and have achieved a monopoly over all phases of the petroleum industry from the exploration for and production of crude oil to the transportation, refining and marketing of crude oil and all petroleum products, including low sulphur distillate and residual oil.

60. In 1972, SOCAL, TEXACO and MOBIL in concert with EXXON, GULF OIL CORPORATION, BRITISH PETROLEUM COMPANY LIMITED and the ROYAL DUTCH SHELL GROUP, the seven major members of LPG and the petroleum industry, individually and through joint ventures and consortia among themselves, controlled 64.2% of crude oil production in the free world. They accounted for 77.1% of all OPEC production, 77.6% of production in the Persian Gulf area and Libya, and approximately 80% of Persian Gulf production.

61. Defendants have used this monopoly power to limit the supply of petroleum products available to the consuming public and to fix and maintain the prices for these products at unreasonable and artificially high levels. Although defendants were aware of and knew that increasing environmental concern has led and will lead to the requirement that public utilities use only low sulphur distillate and residual oil in their plants, defendants have kept the supply of such petroleum products down and the price for such products up. They have accomplished this, in part, by choosing not to exploit deposits of low sulphur crude oil and by limiting the capacity to refine high sulphur crude oil into low sulphur petroleum products.

62. As a result of the foregoing conspiracy, acts and practices, LILCO has been damaged by having had to pay inflated, artificially high prices for its low sulphur distillate and residual oil requirements. LILCO has no present knowledge of the amount of overcharge that has resulted from such unlawful acts and practices. The facts regarding such overcharge are solely within the knowledge and control of defendants and their co-conspirators. After discovery of those facts, LILCO will amend this complaint to set forth its damages specifically.

**THIRD CLAIM FOR RELIEF  
AGAINST SOCAL**

63. LILCO repeats and realleges the allegations of paragraphs 1 through 4 and 10 through 56 of this complaint.

64. SOCAL has deliberately refused to supply NEPCO with low sulphur crude oil since September 1, 1973. It has done so intentionally and with knowledge of NEPCO's obligation to LILCO under NEPCO's supply agreement with LILCO. SOCAL did so knowing that unless it met its obligations to NEPCO, NEPCO would be unable to meet LILCO's low sulphur residual oil requirements and that if LILCO were able to secure such low sulphur residual oil, it would be able to do so only at greatly increased cost. By wrongfully, maliciously and wilfully refusing to supply NEPCO with low sulphur crude oil, SOCAL intentionally caused NEPCO to breach its agreement with LILCO and has caused and is causing LILCO damages as set forth in paragraphs 49 through 56, *supra*.



**PRAYER FOR RELIEF**

WHEREFORE, plaintiff prays:

A. That this Court order, adjudge and decree that defendants have violated Sections 1 and 2 of the Sherman Act as alleged in the FIRST and SECOND claims for relief;

B. That with respect to the FIRST claim for relief, LILCO be awarded judgment for \$186,000,000 or three times the damages of \$62,000,000 presently known to LILCO, plus three times such other and further damages that LILCO has sustained and will sustain in the future as a result of defendants' unlawful acts and practices, plus the costs of this action including reasonable attorneys' fees;

C. That with respect to the SECOND claim for relief, LILCO shall be awarded judgment for three times the damages it has sustained and will sustain in the future as a result of defendants' unlawful acts and practices, plus the costs of this action including reasonable attorneys' fees;

D. That with respect to the FIRST claim for relief, defendants and each of them, and their subsidiaries and affiliates, be enjoined and restrained from combining, conspiring, obstructing or in any way interfering with or attempting to interfere with the ability of NEPCO and others in purchasing, lifting, transporting, refining and distributing Libyan crude oil;

E. That with respect to the SECOND claim for relief, defendants and each of them and their subsidiaries and affiliates be enjoined and restrained from combining and conspiring or attempting in any way to

control the supply and price of low sulphur crude, distillate and residual oil and from monopolizing or attempting to monopolize the world-wide market for low sulphur crude, distillate and residual oil;

F. That this Court order, adjudge and decree with respect to the THIRD claim for relief, that SOCAL intentionally and wrongfully caused NEPCO to breach its agreement with LILCO and LILCO shall be awarded judgment for \$62,000,000 plus such other and further damages that LILCO has sustained and will sustain in the future as a result of SOCAL's wrongful acts, and punitive damages of an additional \$62,000,000 plus the costs of this action;

G. That the Court grant such other relief as may be appropriate.

Dated: New York, New York  
May 22, 1974.

ROSENMAN COLIN KAYE PETSCHER  
FREUND & EMIL

By /s/ ASA D. SOKOLOW  
ASA D. SOKOLOW  
575 Madison Avenue  
New York, New York 10022  
(212) 688-7800

**DEMAND FOR JURY**

Pursuant to Rule 38 of the Federal Rules of Civil Procedure plaintiff demands a trial by jury.



CON EDISON Complaint

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**United States District Court**  
SOUTHERN DISTRICT OF NEW YORK

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CIVIL ACTION No.

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CONSOLIDATED EDISON COMPANY OF  
NEW YORK, INC.,

*Plaintiff,*

*—against—*

STANDARD OIL COMPANY OF CALIFORNIA,  
TEXACO INC., MOBIL OIL CORPORATION,  
CHEVRON OIL TRADING COMPANY, TEXACO  
OVERSEAS PETROLEUM COMPANY and JOHN  
DOES 1 through 10,

*Defendants.*

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**COMPLAINT**

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Dated: New York, New York  
June 20, 1974

ROSENMAN COLIN KAYE PETSCHKE  
FREUND & EMIL  
*Attorneys for Plaintiff*  
575 Madison Avenue  
New York, New York 10022  
(212) 688-7800

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**United States District Court**  
SOUTHERN DISTRICT OF NEW YORK

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CONSOLIDATED EDISON COMPANY OF NEW YORK, INC.,  
*Plaintiff,*

*—against—*

STANDARD OIL COMPANY OF CALIFORNIA, TEXACO INC.,  
MOBIL OIL CORPORATION, CHEVRON OIL TRADING COM-  
PANY, TEXACO OVERSEAS PETROLEUM COMPANY and  
JOHN DOES 1 THROUGH 10,  
*Defendants.*

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**COMPLAINT**

Plaintiff, Consolidated Edison Company of New York, Inc. (CON EDISON), by its attorneys Rosenman Colin Kaye Petschek Freund & Emil, for its complaint herein alleges as follows:

**JURISDICTION AND VENUE**

1. The FIRST claim for relief of this complaint, directed against all defendants, is instituted pursuant to Sections 4 and 16 of the Act of Congress of October 15, 1914 (15 U. S. C. §§ 15 and 26 (1970)) commonly known as the Clayton Act, and arises under Sections 1 and 2 of the Act of Congress of July 2, 1890, as amended (15 U. S. C. §§ 1 and 2 (1970)), commonly known as the Sherman Act. Jurisdiction of this Court is invoked pursuant to the provisions of 28 U. S. C. § 1337 (1970). Venue of the action in this Court is proper pursuant to the provisions of 15 U. S. C. §§ 15 and 22 (1970). Defendants Standard

Oil Company of California (SOCAL), Texaco Inc. (TEXACO), Mobil Oil Corporation (MOBIL), Chevron Oil Trading Company and Texaco Overseas Petroleum Company, are each doing business and are found in the Southern District of New York. The acts and practices hereinafter described occurred in and affect commerce among the States and between the United States and foreign nations.

2. Jurisdiction of the SECOND claim for relief brought by CON EDISON against SOCAL is founded upon diversity of citizenship under the provisions of 28 U. S. C. § 1332 (1970) and on principles of pendent jurisdiction. CON EDISON is a gas, electric and steam corporation organized and existing under the laws of the State of New York, with its principal place of business at 4 Irving Place, New York, New York. SOCAL is a corporation organized and existing under the laws of the State of Delaware, with its principal place of business at the Standard Oil Building, 225 Bush Street, San Francisco, California. The amount in controversy exceeds the sum of \$10,000, exclusive of interest and costs.

#### **THE PARTIES**

3. At all times hereinafter mentioned, CON EDISON has been a domestic corporation, duly organized and existing under and by virtue of the Transportation Corporations Law of the State of New York, and has been a gas, electric and steam corporation as defined in subdivisions 11, 13 and 22 of Section 2 of the Public Service Law of the State of New York and as such, generates and distributes electricity and steam for residential, commercial and industrial use in New York City in the Boroughs of Manhattan, Brooklyn, Bronx and Staten Island and in parts of the Borough of Queens and the County of Westchester. CON EDISON also generates and distributes steam for space heating and



cooling in the Borough of Manhattan. At all times hereinafter mentioned, CON EDISON, pursuant to the Public Service Law of the State of New York, has been subject to the jurisdiction of the Public Service Commission of the State of New York as to practically all of its operations, but particularly with regard to the reasonableness of its rates and charges for providing electric and steam service to its customers.

4. SOCAL is the fifth largest petroleum company and the tenth largest corporation in the United States, with assets in 1973 in excess of \$9.0 billion. It reported revenue in 1973 of \$8.9 billion and net income of \$843.6 million. In the first quarter of 1974 it reported a net income of \$293 million on revenue of \$3.9 billion. SOCAL is engaged on a world-wide basis in the exploration for, and production, transportation, refining, distribution and marketing of petroleum and petroleum products.

5. Chevron Oil Trading Company is a corporation organized and existing under the laws of the State of Delaware, with an office and place of business at 30 Rockefeller Plaza, New York, New York. It is a wholly owned subsidiary of SOCAL. Hereinafter, unless otherwise stated, reference to SOCAL shall include reference to Chevron Oil Trading Company.

6. TEXACO is a corporation organized and existing under the laws of the State of Delaware, with its principal place of business at 135 East 42nd Street, New York, New York. TEXACO is the second largest petroleum company and the third largest corporation in the United States, with assets in 1973 in excess of \$13.5 billion. It reported revenue in 1973 of \$11.8 billion and net income of \$1.3 billion. In the first quarter of 1974, it reported net income of \$589.4 million on revenues of \$4.9 billion. TEXACO is engaged on a world-wide basis in the exploration for, and produc-



tion, transportation, refining, distribution and marketing of petroleum and petroleum products.

7. Texaco Overseas Petroleum Company is a corporation organized and existing under the laws of the State of Delaware, with an office and place of business at 135 East 42nd Street, New York, New York. It is a wholly owned subsidiary of TEXACO. Hereinafter, unless otherwise stated, reference to TEXACO shall include reference to Texaco Overseas Petroleum Company.

8. MOBIL is a corporation organized and existing under the laws of the State of New York, with its principal place of business at 150 East 42nd Street, New York, New York. MOBIL is the third largest petroleum company and the seventh largest corporation in the United States, with assets in 1973 in excess of \$10.6 billion. It reported revenue in 1973 of \$12.8 billion and net income of \$849.3 million. In the first quarter of 1974 it reported net income of \$258.6 million on revenues of \$4.4 billion. MOBIL is engaged on a world-wide basis in the exploration for, and production, transportation, refining, distribution and marketing of petroleum and petroleum products.

9. JOHN DOES 1 through 10 are co-conspirators with SOCAL, TEXACO and MOBIL in the acts and practices hereinafter described, whose participation in those events is presently unknown to plaintiffs. As their identity and the nature and extent of their participation become known, this complaint will be amended and they will be added as parties to this action.

#### DEFINITIONS

10. AMOSEAS—American Overseas Petroleum Limited. AMOSEAS is a company engaged in crude oil drilling and producing in Libya. It is one of a series of companies jointly owned by SOCAL and TEXACO and known

as the "Caltex" group, which group constitutes an integrated organization for the exploration for, and production, transportation, refining and marketing of crude oil and products thereof, and is engaged in such operations in the Middle East, Far East, Africa and Australasia.

11. ARAMCO—Arabian-American Oil Company. ARAMCO is a company engaged in the exploration for and the production, refining and transportation of crude oil within Saudi Arabia, operating under a concession granted by the Government of Saudi Arabia. SOCAL, TEXACO and EXXON Corporation (formerly Standard Oil Company of New Jersey) each owned 30% of ARAMCO and MOBIL owned the remaining 10%. On December 20, 1972 the four partners reached agreement with the Government of Saudi Arabia whereby, effective January 1, 1973, the Government of Saudi Arabia became a 25% owner in ARAMCO and the interests of TEXACO, SOCAL and EXXON were reduced to 22½% each and the interest of MOBIL to 7½%.

12. BORCO—Bahamas Oil Refining Company. BORCO is a Bahamian refining company owned 65% by New England Petroleum Corporation and 35% by SOCAL.

13. HOST COUNTRY is a country other than the United States in which an oil producing company operates.

14. NEPCO—New England Petroleum Corporation. NEPCO is a New York corporation with its principal place of business at 825 Third Avenue, New York, New York. NEPCO is one of the largest independent importers, refiners, and distributors of petroleum products in the United States, with revenues in 1973 of \$600 million. NEPCO services accounts throughout the East Coast of the United States.



15. NOC—Libyan National Oil Company. NOC is the Libyan government-owned oil corporation. It is engaged in the marketing of oil produced in Libya and belonging to the Government of Libya.

16. OPEC—Organization of Petroleum Exporting Countries. OPEC is an organization of certain Asian, African and Latin American countries, which account for the bulk of the known crude oil reserves in the world. OPEC includes all major Persian Gulf and North African crude oil producing countries, including Libya and Saudi Arabia.

17. PERSIAN GULF area is the geographic area including and surrounding the Persian Gulf. Countries in the area include: Iran, Iraq, Kuwait, Saudi Arabia, Qatar, Bahrain, United Arab Emirates and Oman.

18. CRUDE OIL is unrefined oil. In its crude state oil can contain various percentages of sulphur.

19. RESIDUAL OIL (No. 6) is that portion of the crude oil that remains after completion of the refining process, during which various petroleum products are extracted from the crude oil. Residual oil is used by utilities, including CON EDISON, as fuel in steam turbine electric generating units, which are the large, primary generating units which consume the greatest part of oil burned by utilities. CON EDISON also uses residual oil as fuel in the plants in which it generates steam for sale as steam.

20. LOW SULPHUR, as used in this complaint, describes crude or residual oil with sulphur content of 0.3% or less.

**FIRST CLAIM FOR RELIEF  
AGAINST ALL DEFENDANTS**

21. Beginning on or before January, 1971, and during all times thereafter, the named defendants and JOHN DOES 1 through 10 have combined and conspired unlawfully to restrain and monopolize trade and commerce, and have in fact unlawfully restrained and monopolized trade and commerce, in low sulphur oil to be imported into the East Coast of the United States. A major objective of the conspiracy was and is to protect the monopoly interests of the defendants and others in the Persian Gulf area. To carry out the conspiracy and to achieve their objectives, the defendants agreed to implement and did implement a campaign and plan of action hereinafter set forth, with full knowledge that the implementation of said plan would materially damage CON EDISON and jeopardize the supply of electricity to consumers on the East Coast of the United States.

22. Defendants aggressively and coercively carried out such campaign and plan of action by means of the measures hereinafter set forth, among others. All such acts and practices were intended by defendants to be, and were in fact, in furtherance of the aforesaid conspiracy and have had the effect of substantially restraining trade and preventing competition in the importation of low sulphur oil into the East Coast of the United States.

23. CON EDISON is the sole supplier of electric power to consumers in most of New York City and Westchester County in the State of New York. Under applicable environmental regulations, CON EDISON is required to burn only low sulphur oil in its plants in New York City and Westchester County. CON EDISON's annual requirements of low sulphur residual oil total



approximately 50 million barrels. From September 1, 1973 through May 31, 1974, CON EDISON has burned 35.3 million barrels of low sulphur residual oil, of which some 11.6 million barrels have been supplied under contract by NEPCO.

24. NEPCO has been a major supplier of CON EDISON's residual oil requirements since 1963. The agreement that was in force in August, 1973 between NEPCO and CON EDISON extended through a term ending March 31, 1980 and obligated NEPCO to supply CON EDISON with low sulphur residual oil in the amount of approximately 23 million barrels per year. CON EDISON was induced to enter into that agreement by the express representation of SOCAL's officers to CON EDISON's officers that SOCAL, a major supplier of low sulphur crude oil to NEPCO, would support NEPCO and make its exceedingly large crude oil reserves throughout the world available to NEPCO to enable NEPCO to meet its needs. The existence of the agreement was common knowledge in the petroleum industry.

25. Under the agreement, the maximum price CON EDISON paid NEPCO for residual oil was to be determined by reference to the prices for the same type product of Humble Oil and Refining Company (a subsidiary of EXXON, a partner of SOCAL, TEXACO and MOBIL in ARAMCO), Asiatic Petroleum Corporation and Amerada Hess Corporation. Payments under the agreement were to be made on or before the 20th day of the month following the month in which deliveries were made, provided NEPCO's invoices were received on or before the 13th day of such following month.

26. As of August, 1973, SOCAL was NEPCO's primary supplier of low sulphur crude oil. In the early 1960s SOCAL and TEXACO—operating through AMOSEAS

—had found a substantial quantity of low sulphur crude oil in Libya. In 1968, NEPCO entered into a long-term agreement with SOCAL under which SOCAL agreed to supply NEPCO with the major portion of SOCAL's share of AMOSEAS' output, to be delivered by SOCAL to the BORCO refinery. As part of the agreement, SOCAL received a 35% interest in the BORCO refinery and consented to guaranty a loan taken by NEPCO, which guaranty provided that in the event of a default by NEPCO in repayment of the loan, NEPCO's 65% interest in the BORCO refinery would pass to SOCAL. The effect of this agreement was to make Libya a major source of supply of low sulphur oil for the East Coast of the United States and, as the situation existed in August, 1973, if that supply were to be interrupted, there could be substantial brownouts or blackouts in the East Coast of the United States.

27. In January, 1971, SOCAL, TEXACO, MOBIL and most other free world oil companies with interests in OPEC countries, formed a committee known as the London Policy Group (LPG) to plan policy with respect to and to bargain jointly with the OPEC countries, including Libya. The members of LPG agreed, among other things: (a) that no member of LPG would reach any agreement with an OPEC country without the consent of all LPG members and (b) that if an OPEC country took any action against any LPG member, *e.g.*, nationalization of all or part of its oil reserves in that country, the other members of LPG would supply oil to that company, at cost, to the extent of its losses resulting from that action.

28. Negotiations with OPEC countries were carried out jointly by LPG members from the time of LPG's formation until early 1972, when the LPG members whose primary interests were in the Persian Gulf (consisting of



SOCAL, TEXACO, MOBIL and the other major petroleum companies, known within LPG as the "chiefs") in effect split from the LPG members whose primary interests were in Libya (mostly the smaller "independent" petroleum companies). Thereafter, in an effort to protect their monopoly interests in the Persian Gulf area, a number of the major petroleum company members of LPG reached agreement with a number of the Persian Gulf host countries. Specifically, SOCAL, TEXACO, MOBIL and EXXON negotiated an agreement with the Government of Saudi Arabia whereby the Government acquired a 25% participation in ARAMCO.

29. In August, 1973, a number of the smaller "independent" petroleum companies, which were operating in Libya and which had only insignificant holdings in the Persian Gulf area, reached an agreement with the Government of Libya. Under this agreement, 51% of all crude oil produced by those companies would belong to NOC and 49% of the crude oil produced would belong to the companies. The companies would have the right to buy back from NOC most or all of the remaining 51%. Although these smaller companies were LPG members, the LPG did not approve such agreement.

30. SOCAL, TEXACO, MOBIL and other major LPG members also received offers from the Government of Libya for a 51% participation by NOC in their Libyan interests. In their judgment, however, a grant of a 51% interest in their Libyan holdings would have jeopardized their far more vast and more valuable holdings in the Persian Gulf area, where they had succeeded in negotiating much more favorable agreements, including that with the Government of Saudi Arabia for a 25% participation in ARAMCO. Accordingly, SOCAL, TEXACO, MOBIL

and other major LPG members concertedly decided to reject and did reject this proposal of the Libyan Government.

31. In August, 1973, NEPCO learned that its Libyan source of supply was threatened by these events. Therefore, in an effort to protect itself and to insure adequate oil supplies for its customers and the East Coast of the United States, NEPCO proposed to SOCAL that NEPCO purchase either SOCAL's 50% interest in AMOSEAS or all of AMOSEAS. SOCAL rejected NEPCO's offer for the reason stated in paragraph 30, *supra*.

32. On September 1, 1973, Libya announced that it would nationalize a 51% interest of all companies in Libya that had not previously accepted a 51% participation, including AMOSEAS, other Libyan interests of SOCAL and TEXACO, and the Libyan interests of MOBIL.

33. On September 10, 1973, SOCAL informed NEPCO that the Libyan Government had seized 51% of SOCAL's interest in AMOSEAS, that SOCAL was resisting this takeover, and that as of September 1, 1973, all deliveries of Libyan crude oil by SOCAL were suspended.

34. NEPCO immediately replied, stating that SOCAL's position would violate SOCAL's contractual obligations to NEPCO and reminding SOCAL that 49% of the AMOSEAS-produced crude oil still belonged to SOCAL and TEXACO and that most of the remaining 51% was being offered to SOCAL and TEXACO by NOC on a buy-back arrangement. SOCAL stood firm and refused to honor its contractual commitment. Not only did SOCAL refuse to deliver to NEPCO any Libyan crude oil, it also refused to provide any replacement oil from its other sources. At the same time, SOCAL withdrew its tankers which,



under its agreement with NEPCO, were used to carry the Libyan oil from Libya to the BORCO refinery in the Bahamas. These actions, taken in accord with agreements made among certain LPG members, were designed to protect SOCAL's and TEXACO's interests in the Persian Gulf, including their interests in ARAMCO.

35. Upon the invitation of the Government of Libya, NEPCO opened negotiations with NOC for possible direct purchase from NOC of part of NOC's 51% share of AMOSEAS-produced crude oil. Following SOCAL's announced boycott of NEPCO and its refusal to honor its contract with NEPCO, NEPCO entered into an agreement with NOC for purchase in Libya of the approximate quantity of low sulphur crude oil that SOCAL previously had been supplying. NEPCO's agreement with NOC, however, was at substantially higher prices per barrel and on distinctly less favorable terms than NEPCO's agreement with SOCAL. In addition, since SOCAL had withdrawn its tankers, NEPCO had to arrange for and bear the greatly increased cost of transporting the oil from Libya to the BORCO refinery.

36. Thereafter, pursuant to an unlawful conspiracy whose object was to protect their monopoly interest in and virtually complete control over all aspects of the production, transportation, refining and marketing of crude oil in the Persian Gulf area, SOCAL, TEXACO, MOBIL and JOHN DOES 1 through 10, embarked on a course of action designed to prevent NEPCO from dealing with the Libyan Government, from purchasing low sulphur crude oil from NOC, from transporting such low sulphur crude oil, from refining it and from distributing it to its customers, including CON EDISON.

37. On or about September 13, 1973, R. G. Weinand, Executive Vice President of NEPCO, received a telephone call from L. W. Folmar, a Vice President of TEXACO and Chairman of the Board of Directors of Texaco Overseas Petroleum Company. Mr. Folmar informed Mr. Weinand that he had heard that NEPCO had put a ship into Libya to lift oil which had been taken from AMOSEAS, that this oil still belonged to TEXACO, and that if NEPCO lifted this oil, TEXACO would pursue all means to prevent its use by NEPCO.

38. Minutes later, D. L. DeBaun, a Vice President of NEPCO, received a telephone call from H. A. Navis, a Vice President of SOCAL and an officer of Chevron Oil Trading Company. Using almost the same words as Mr. Folmar, Mr. Navis warned NEPCO not to take any oil from NOC and threatened action to prevent NEPCO from making use of any Libyan oil.

39. On the same day, both TEXACO and SOCAL sent letters to NEPCO restating their position, insisting that the Libyan oil was theirs, and threatening action if NEPCO actually lifted the oil.

40. In spite of the threats by SOCAL and TEXACO, NEPCO did lift the oil which it had purchased from NOC. It was loaded at the instruction of NOC at a terminal in Libya operated by a subsidiary of MOBIL.

41. Thereafter, and pursuant to the conspiracy, SOCAL, TEXACO and MOBIL decided to and did institute a series of groundless legal actions around the world in an effort to harass NEPCO and to prevent NEPCO from transporting and refining the Libyan oil it had purchased from NOC and from distributing it to its customers, including CON EDISON.



42. A subsidiary of SOCAL and a subsidiary of TEXACO brought an action in Italy against an Italian refinery which had in its possession certain oil belonging to NEPCO. Although claiming in this action that this "hot oil" was rightfully "its oil", at no time would SOCAL agree to deliver the oil either to NEPCO, as it was obligated to do under its supply agreement with NEPCO, or to any of NEPCO's East Coast customers, including CON EDISON.

43. MOBIL, a SOCAL and TEXACO partner in ARAMCO but not in AMOSEAS, then brought an action in the Bahamas against a Bahamian subsidiary of NEPCO alleging that the oil NEPCO had purchased from NOC rightfully belonged to MOBIL, notwithstanding the fact that MOBIL did not produce that type of oil in Libya.

44. Concurrently, a third action was brought in the Bahamas by TEXACO against a subsidiary of NEPCO trying to prevent NEPCO from using the oil bought from NOC and lifted in Libya.

45. As a result of the foregoing conspiracy, acts and practices of SOCAL, TEXACO, MOBIL and JOHN DOES 1 through 10, NEPCO was unable to meet its full obligations to CON EDISON to deliver low sulphur residual oil. As a result, CON EDISON was required to purchase substantial amounts of low sulphur residual oil from other suppliers at prices substantially higher than those provided for in CON EDISON's agreement with NEPCO.

46. As a further result of the actions of SOCAL, TEXACO, MOBIL and JOHN DOES 1 through 10, the cost to NEPCO of Libyan low sulphur crude oil immediately rose from a pre-September 1, 1973, price of \$3.60 per barrel delivered to the BORCO refinery in the Bahamas to

\$6.80 per barrel, an increase of almost 90%. Thereafter, and as a result of the conspiracy, the price of low sulphur crude oil continued to rise precipitously.

47. This increase in the direct cost per barrel of low sulphur crude oil and the increase in indirect costs to NEPCO resulting from the foregoing acts by SOCAL, TEXACO, MOBIL and JOHN DOES 1 through 10, led NEPCO to seek to increase the price that NEPCO charged CON EDISON for those amounts of low sulphur residual oil which it was still able to supply to CON EDISON. Two days after SOCAL had announced its intention not to deliver Libyan crude oil to NEPCO, NEPCO informed CON EDISON that replacement oil, to the extent available, would henceforth be offered at a price increase of up to \$3.20 per barrel of low sulphur residual oil on terms of payment five days after delivery. Thereafter, and as a result of the conspiracy, the price charged CON EDISON by NEPCO for low sulphur residual oil continued to rise precipitously.

48. After notification by NEPCO of its price increase, CON EDISON tried to obtain low sulphur residual oil from other sources. No major member of the LPG submitted an offer.

49. As a result of the foregoing conspiracy, acts and practices, in the period from September 1, 1973 to date, CON EDISON has suffered damages in the amount of fifty million dollars (\$50,000,000) as a result of greatly increased costs for its low sulphur residual oil requirements. Such damages are continuing.

50. In addition, as a result of the foregoing conspiracy, acts and practices, NEPCO has demanded that CON EDISON pay NEPCO within five days after delivery instead of as provided in the agreement between CON



EDISON and NEPCO. In the period from September 1, 1973 to date, this has resulted in damages of one million four hundred thousand dollars (\$1,400,000) in the form of increased interest costs to CON EDISON. Such damages are continuing.

51. As a result of the foregoing conspiracy, acts and practices, and the threatened loss of its supplies of residual oil, CON EDISON has thus far had to expend six hundred thousand dollars (\$600,000) to prepare for conversion of a portion of its oil burning capability to a coal burning capability.

52. Finally, as a result of the foregoing conspiracy, acts and practices, CON EDISON has lost good will in its service area and among its customers; CON EDISON has been forced to omit its dividend for the second quarter of 1974, the first such dividend it has omitted since 1885; the confidence of the financial community in CON EDISON has diminished, making investors reluctant or unwilling to accept CON EDISON securities, forcing CON EDISON to postpone a scheduled issue of common stock planned for offering in May 1974, and increasing the cost to CON EDISON of marketing such securities and of obtaining other forms of financing necessary for CON EDISON to maintain its financial integrity. Damages to CON EDISON as a result of the foregoing are substantial and are continuing and their amount cannot be measured or quantified at this point. When such damages are susceptible of measurement, CON EDISON will amend this complaint to set forth such damages specifically.

53. By virtue of electric fuel adjustment provisions contained in the rate schedules of CON EDISON and approved by the Public Service Commission of the State of

New York, a portion of the fuel price increases referred to in paragraph 49, *supra*, has been borne by CON EDISON's electric and steam customers. In the event CON EDISON recovers damages for such increases, a similar portion of such recovery will be refunded to said electric and steam customers in a manner and to the extent approved by the New York Public Service Commission.

54. Unless SOCAL, TEXACO, MOBIL and JOHN DOES 1 through 10 are enjoined from continuing in the illegal and conspiratorial acts and practices described above, CON EDISON will continue to suffer damages in the form of increased costs, it will continue to bear the risk of possible brownouts or blackouts of its service area due to unavailability of low sulphur residual oil and it will continue to experience erosion of its financial integrity and its ability to obtain financing sufficient to enable it to continue to provide adequate service to the public. It is and will be virtually impossible to ascertain or measure in damages the extent and nature of the injury that will be inflicted upon CON EDISON and its services as a result of the foregoing, an injury for which CON EDISON has and will have no adequate remedy at law.

**SECOND CLAIM FOR RELIEF  
AGAINST SOCAL**

55. CON EDISON repeats and realleges the allegations of paragraphs 1 through 4 and 10 through 54 of this complaint.

56. SOCAL has deliberately refused to supply NEPCO with low sulphur crude oil since September 1, 1973. It has done so intentionally and with knowledge of NEPCO's obligation to CON EDISON under NEPCO's supply agreement with CON EDISON. SOCAL did so knowing that



unless it met its obligations to NEPCO, NEPCO would be unable to meet CON EDISON's low sulphur residual oil requirements and that if CON EDISON were able to secure such low sulphur residual oil, it would be able to do so only at greatly increased cost. By wrongfully, maliciously and wilfully refusing to supply NEPCO with low sulphur crude oil, SOCAL intentionally caused NEPCO to be unable to perform under its agreement with CON EDISON and has caused and is causing CON EDISON damages as set forth in paragraphs 49 through 52 and 54, *supra*.

**PRAYER FOR RELIEF**

WHEREFORE, plaintiff prays:

A. That this Court order, adjudge and decree that defendants have violated Sections 1 and 2 of the Sherman Act as alleged in the FIRST claim for relief;

B. That with respect to the FIRST claim for relief, CON EDISON be awarded judgment for \$156,000,000 or three times the \$52,000,000 damages presently known to CON EDISON, plus three times such other and further damages that CON EDISON has sustained and will sustain in the future as a result of defendants' unlawful acts and practices, plus the costs of this action including reasonable attorneys' fees;

C. That with respect to the FIRST claim for relief, defendants and each of them, and their subsidiaries and affiliates, be enjoined and restrained from combining, conspiring, obstructing or in any way interfering with or attempting to interfere with the ability of NEPCO and others in purchasing, lifting, transporting, refining and distributing Libyan crude oil;

D. That this Court order, adjudge and decree with respect to the SECOND claim for relief, that SOCAL intentionally and wrongfully caused NEPCO to be unable to perform under its agreement with CON EDISON and CON EDISON shall be awarded judgment for \$52,000,000 plus such other and further damages that CON EDISON has sustained and will sustain in the future as a result of SOCAL's wrongful acts, and punitive damages of an additional \$52,000,000 plus the costs of this action;

E. That the Court grant such other relief as may be appropriate.

Dated: New York, New York  
June 20, 1974

ROSENMAN COLIN KAYE PETSCHKE  
FREUND & EMIL

By .....  
Asa D. Sokolow  
575 Madison Avenue  
New York, New York 10022  
(212) 688-7800

**DEMAND FOR JURY TRIAL**

Pursuant to Rule 38 of the Federal Rules of Civil Procedure plaintiff demands a trial by jury.

By .....  
Asa D. Sokolow





Defendants' Notice of Joint Motion

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

-----X

LONG ISLAND LIGHTING COMPANY, :

Plaintiff, :

-against- :

STANDARD OIL COMPANY OF CALIFORNIA, :

TEXACO INC., MOBIL OIL CORPORATION, :

CHEVRON OIL TRADING COMPANY AND :

TEXACO OVERSEAS PETROLEUM COMPANY, :

Defendants. :

-----X

CONSOLIDATED EDISON COMPANY OF :

NEW YORK, INC., :

Plaintiff, :

-against- :

STANDARD OIL COMPANY OF CALIFORNIA, :

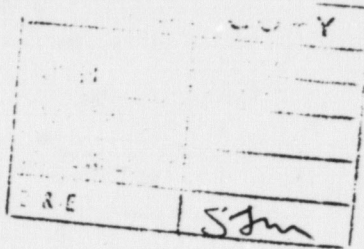
TEXACO INC., MOBIL OIL CORPORATION, :

CHEVRON OIL TRADING COMPANY AND :

TEXACO OVERSEAS PETROLEUM COMPANY, :

Defendants. :

-----X



74 Civ. 2233  
(IBW)

74 Civ. 2645  
(IBW)

NOTICE OF MOTION

SIRS:

PLEASE TAKE NOTICE that upon the complaints in the above-mentioned actions, all prior pleadings and proceedings therein, and upon the accompanying memorandum of law, the undersigned defendants will move this Court at the United States Courthouse, Foley Square, New York, New York, on January 10, 1975, at 10:00 A.M. in the forenoon of that day or as soon thereafter as counsel may be heard, for an order pursuant to Rule 12 of the Federal Rules of Civil Procedure, dismissing, for their failure to state a claim upon which relief can be granted, the First and Second Claims of the



*Defendants' Notice of Joint Motion*

above-captioned complaint of the plaintiff Long Island Lighting Company and the First Claim of the above-captioned complaint of the plaintiff Consolidated Edison Company of New York, Inc., and for such other and further relief as the Court may deem just and proper.

Dated: New York, New York  
November 1, 1974

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Mobil Oil Corporation

*Defendants' Notice of Joint Motion*

DEBEVOISE, PLIMPTON, LYONS & GATES

By 

A Member of the Firm

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Attorneys for Defendant  
Texaco Overseas Petroleum Company

TO: ROSENMAN, COLIN, KAYE,  
PETSCHKE, FREUND & EMIL  
575 Madison Avenue  
New York, New York 10022  
Attention: Asa Sokolow, Esq.





Affidavit of Asa D. Sokolow, sworn to December 20, 1974

[pp. 1-6]

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

- - - - - x

LONG ISLAND LIGHTING COMPANY, :

Plaintiff, :

74 Civ. 2233  
(I.B.W.)

- against - :

STANDARD OIL COMPANY OF CALIFORNIA, :  
TEXACO INC., MOBIL OIL CORPORATION, :  
CHEVRON OIL TRADING COMPANY and :  
TEXACO OVERSEAS PETROLEUM COMPANY, :

Defendants. :

- - - - - x

CONSOLIDATED EDISON COMPANY OF :  
NEW YORK, INC., :

Plaintiff, :

74 Civ. 2645  
(I.B.W.)

- against - :

STANDARD OIL COMPANY OF CALIFORNIA, :  
TEXACO INC., MOBIL OIL CORPORATION, :  
CHEVRON OIL TRADING COMPANY and :  
TEXACO OVERSEAS PETROLEUM COMPANY, :

Defendants. :

- - - - - x

STATE OF NEW YORK )

COUNTY OF NEW YORK )

ss.:

JK

ASA D. SOKOLOW, being duly sworn, deposes and says:

1. I am a member of the firm of Rosenman Colin Kaye  
Petschek Freund & Emil, Esqs., counsel for Long Island Lighting  
Company ("LILCO") and Consolidated Edison Company of New York, Inc.



("CON EDISON"), plaintiffs in this consolidated action. I submit this affidavit in opposition to the motions of defendants to dismiss the antitrust claims asserted in the complaints. Those motions, purportedly brought pursuant to Rule 12(b) of the Federal Rules of Civil Procedure are in fact motions for summary judgment which the court may treat in accordance with the provisions of Rule 56. As we have shown in our accompanying memorandum, as a matter of law, these motions should be denied. Moreover, these motions must be denied because plaintiffs have not had an opportunity for adequate discovery. Finally, it is apparent that there are genuine triable issues of fact, which under no circumstances can be disposed of by summary judgment.

Plaintiffs have not had full discovery

2. Promptly upon filing of the complaint plaintiffs served notices to take depositions of the principal officers of the defendants, served limited requests for production of documents and served interrogatories. The depositions were scheduled to take place during the summer months. I agreed with defense counsel that these depositions would be adjourned provided that the defense counsel in good faith would devote the summer months to producing the documents we had requested. All defense counsel agreed.

3. Defendants did not comply with those agreements. No sooner had the Court assigned Magistrate Schreiber to assist in the pretrial proceedings than the defendants refused to abide by their prior agreements with respect to document production and insisted that plaintiffs' discovery be limited to the so-called "threshold" issues which they proposed to raise in motions.

4. The situation with respect to MOBIL is illustrative of what happened. On August 12, MOBIL moved to dismiss the complaint in both the LILCO and CON EDISON actions. In support of that motion, MOBIL submitted the affidavit of K. W. Wiseman sworn to August 12, 1974 (the "Wiseman affidavit") and a substantial set of exhibits. The motion and exhibits raised factual issues to which plaintiffs could not respond without discovery. Discovery was particularly critical because MOBIL's primary argument in support of its motion was that it "unlike any other [defendant], has only one tenuous link to the complaints, i.e., the assertion that MOBIL filed 'groundless' lawsuits." (September 25, 1974 letter of Sanford M. Litvack, counsel for MOBIL, to Magistrate Schreiber) Moreover, MOBIL took the position that those lawsuits were "instituted unilaterally" by it "without consultation with any other oil company" and in "good faith" belief by MOBIL in its claims. Finally, MOBIL claimed in its Brief that the Libyan actions were "clearly unlawful" and that it is an "uncontested" fact that the "expropriation" by Libya was without compensation.



5. Plaintiffs insisted, therefore, that MOBIL: a) live up to its agreements and produce the documents requested in June; and b) make available for deposition Mr. Wiseman, whose affidavit was before the Court, Mr. Tavoulareas, President of MOBIL, and Mr. Lindenmuth, a top MOBIL officer in charge of its Middle East operations and the first chairman of the London Policy Group in New York.

6. MOBIL resisted these requests vigorously. It insisted that its motion was strictly a Rule 12 motion and offered to withdraw the portions of the Wiseman affidavit that made reference to several of the factual statements listed above. However, when it came to stipulating formally that those paragraphs would not be included in support of the motion or that the validity or invalidity of the Libyan action would not be before the court, MOBIL was unable to agree.

7. At this date the entire Wiseman affidavit is still offered by MOBIL in support of its motion, the invalidity of the decree is still urged by MOBIL as a ground for dismissal, and MOBIL still contends that the only action it took was to file a lawsuit.

8. Magistrate Schreiber permitted plaintiffs some discovery. As a result, plaintiffs examined certain of the files of SOCAL and these documents are referred to throughout our answering

memorandum. However, there has been virtually no documentary production by the TEXACO and MOBIL defendants.

Defendants' motions must be denied

9. The limited discovery to date, summarized in our accompanying memorandum, substantiates the allegations of the complaint. SOCAL documents show that defendants in fact embarked on an illegal collusive course of action that they knew would cause "irreparable harm" to plaintiffs and might close down the East Coast of the United States to low sulphur oil. These documents and, as noted above, we have only seen the tip of the iceberg, demonstrate that plaintiffs were clearly in the target area of the conspiracy and that no esoteric doctrine of the type urged by defendants in their briefs can excuse the conduct which has occurred.

10. Undoubtedly, defendants will at some time come forward with "explanations" of what these documents mean. Those explanations, however, would serve only to crystallize the genuine factual issues presented by these cases and require denial of defendants' motions.

11. Exhibits 1, 2, 3, 34, 35, 37, 57, 62, 63 and 64 annexed to this affidavit are portions of transcripts and exhibits of



depositions of third party witnesses; the remaining exhibits are documents produced by SOCAL. Annexed to this affidavit is a Table of Exhibits which will show the Court the various pages of our memorandum in which reference is made to each exhibit.

Conclusion

12. For the reasons set forth in this affidavit and plaintiffs' memorandum of law, defendants' motions should be denied.

Asa D. Sokolow  
ASA D. SOKOLOW

Sworn to before me this  
20th day of December, 1974.

Mary Ann Verra  
Notary Public

MARY ANN VERRA  
NOTARY PUBLIC, State of New York  
No. 31-9460959  
Qualified in New York County  
Commission Expires March 30, 1976

Exhibit 1 to Sokolow Affidavit—Senate Testimony

1 RUFFS—PATS  
NEW ODD PAGE

( FOR IMMEDIATE RELEASE )

*Filed 5-11  
9/10/77 - n*

[EXECUTIVE SESSION]

NEW ENGLAND PETROLEUM CORPORATION

TUESDAY, NOVEMBER 27, 1973

UNITED STATES SENATE,  
SUBCOMMITTEE ON MULTINATIONAL CORPORATIONS  
OF THE COMMITTEE ON FOREIGN RELATIONS,  
Washington, D.C.

The subcommittee met, pursuant to notice, at 3:30 p.m., in room S-116, U.S. Capitol, Senator Clifford Case presiding.

Present: Senators Church (chairman of the subcommittee) and Case.

Senator CASE. Would you stand and swear to tell the whole truth and nothing but the truth in this hearing.

Mr. CAREY. I certainly do.

Do you want to swear Mr. Manning in?

Senator CASE. Will you do the same?

Mr. MANNING. I do.

Mr. LEVINSON. I would like to ask permission that Mr. Henry commence with the line of questioning.

Senator CASE. Yes, please do. The chairman, I should say, asked me to go ahead with this, he apologized for being so late. He thought he would be here by now but he is involved with matters in the Appropriation or Interior Committee, I am not too sure with which. Go ahead.

TESTIMONY OF EDWARD M. CAREY, PRESIDENT, NEW ENGLAND PETROLEUM CORP., ACCOMPANIED BY RICHARD deV. MANNING, AND PAUL McAULIFFE, COUNSEL

Mr. CAREY. Some of this concerns business in the State of New Jersey.

Senator CASE. Isn't that nice.

Mr. CAREY. It is not so nice. If we had a lot of oil—

Senator CASE. Where is your establishment?

Mr. CAREY. We operate out of New York City but we have an office in Hackensack and we distribute down all through the State down as far as Trenton.

Senator CASE. Fine. No storage place in the State?

Mr. CAREY. We pull out of storage, let's say, down in Trenton and also in Sewaren.

Senator CASE. Fine. Nice to have you here.

Mr. CAREY. Thank you.

Senator CASE. Also give my best to your brother.

Mr. CAREY. I certainly will, thank you.

Mr. HENRY. Mr. Carey, could you begin by just briefly giving us some background on the New England Petroleum Corp., what it is?

Mr. CAREY. New England Petroleum Corp. is an outgrowth of several companies that were formed approximately 1935 and amalgamated into New England in the year 1945, about 30 years ago. It does business along the east coast of the United States from Florida up to Maine, and in the eastern sections of Canada running from Montreal east to the Maritime Provinces. We have approximately eight large ocean terminals and we have a refinery in the Bahamas at Freeport.

The refinery in the Bahamas is at present at the level of 500,000 barrels a day which makes it one of the largest refineries in the world. In that refinery we are partners with Standard Oil Co. of California. We own 65 percent of the refinery and they own 35 percent. I am sorry to say.



## 2 RUFFS—PATS

We operate approximately 30 ships of which we own 5 and 25 are on long term charter. These ships are used to supply fuel oil mainly to the east coast of the United States. We don't make any gasoline. Most of our products are fuel oils and petrochemical feedstocks which go into plants in Puerto Rico as well as the United States.

During the period 1945 up until the early 1960's we purchased most of our supplies from the major oil companies, Shell and the Standard Oil Co. of New Jersey, out of Venezuela. But because our business, our utility business, which was largely with the Public Service of New Jersey and Consolidated Edison and Long Island Lighting Co. in New York was growing rather rapidly and our supplies for those companies was not, we had to take some steps to amplify our supply and, second, the composition of the supply was changing somewhat since the utilities, being good citizens, had undertaken somewhat in advance of the environmental regulations to lower the sulfur content of the fuels so they asked us if it would be possible to supply them with a lower sulfur fuel.

Well, if we stayed the way we had been operating that would have been impossible. We could not have done it. So we went to Standard of California—and I guess I have got that reversed, they came to us—since Standard Oil Co. of California is a net producer of crude oil, they produce more crude oil than they refine or were able to sell at that time, and we agreed to put up this refinery in the Bahamas and they agreed to supply part of the crude oil; namely the sweet crudes. That was what we negotiated for in 1968, and the refinery went on the line in 1970. Part of our troubles, going back to retrace our steps somewhat, were due to the fact that during the period 1959 to 1965 this country operated under the quota system so far as residual fuel is concerned which meant that it was almost impossible, in fact it was—

Senator CASE. Would you describe that, what that system is for the record.

Mr. CAREY. We had a quota system which permitted only so much oil to come into the country.

Senator CASE. You mean "we" is who?

Mr. CAREY. We, as being the importers, were allowed to each import so much and the country as a whole was only allowed to import so much.

Mr. LEVINSON. Mr. Carey, if I might, this was the U.S. Government?

Mr. CAREY. U.S. Government.

Mr. LEVINSON. That set up an import quota system?

Mr. CAREY. Set up an import quota system, that is correct.

Senator CASE. OK.

Mr. CAREY. That was geared to certain products as well as residual fuel oil. I was addressing myself principally to residual fuel oil because that was the largest quantity of the products. No. 2 fuel oil, of course, was another one. But addressing myself to residual fuel oil. I kind of undertook a one-man battle to see if I could have that changed, and after fighting that battle from 1959 to 1965 we were successful, and, Senator CASE, you helped us on that as did many of the others.

Senator CASE. New England, New York.

Mr. CAREY. New England and New York and the people who lived in the populous areas put their shoulder to the wheel, and we were successful in having that removed. When we did that, why, many of the utilities on the east coast switched from high-sulfur-content West Virginia coal to the use of fuel oil and voluntarily to low sulfur fuel.

To produce these low-sulfur-type fuels we went into the type of operation I explained in the Bahamas with Standard Oil Co. of California. The plant we put up in the Bahamas was at first a 250,000-barrel-a-day refinery. The reason we went to the Bahamas was mainly because of the deep water. It is located on a depth of water which can accommodate tankers of up to 100 feet in draft, and it is only 75 miles from the Florida coast, and there is very little chance of any pollution; so it seemed to fit every facet of the oil industry and, at the same time, not bother anybody environmentally.

Mr. LEVINSON. Could you at this point—

Mr. CAREY. Yes, surely.

Mr. LEVINSON [continuing.] Explain why it was that you chose SoCal, which is the Standard Oil of California, as your partner?

Mr. CAREY. Yes; I can do that very quickly.

SWEET  
CRUDE

### 3 RUFFS—PATS

Mr. LEVINSON. And also delineate a little bit the financing of the refinery.

Mr. CAREY. Yes, sir. Standard Oil Co. of California and the Texas Co. were partners in Amoseas, were partners in a drilling company in Libya, a successful drilling company, and they found a rather substantial quantity of extremely low-sulfur crude oil, and I am not silly enough to think that they came over to New York looking for us because they liked us. They first went to all of our customers and tried to sell them the oil, but they found that we had them under long-term contracts and they were unable to budge them. So after trying to sell our customers they then came around and said, "If we can't beat you we will try to join you," and they said they would like to come into business with us and supply us with crude oil and join us in the refinery.

Well, that seemed reasonable enough. So we agreed to go along and build a refinery in the Bahamas. Being as close as we possibly could to Florida and the east coast of the United States, and having the geographical locations which we did, being on the tanker paths, being in deep water, and being in a type of climate where you did not have to spend too much money for outdoor buildings and that type of thing, you can put it up rather inexpensively and quickly. So in any event we proceeded.

They developed their Libyan production along with us and we signed a long term contract with them to buy their Libyan output. Is that the type of information you were looking for?

Mr. LEVINSON. Yes; and additionally, if you would, with respect to the financing?

Mr. CAREY. Dick, would you take over on the financing thing? You were closer to that than I was.

Mr. MANNING. We initially attempted to finance the refinery through the Export-Import Bank and were turned down. We then went to England and to Italy to determine what types of financing were available, because there in those two places there were—

Mr. CAREY. If you will excuse me, just about this time the U.S. Government imposed controls on export, OFDI controls.

Mr. MANNING. Limiting foreign investments.

Mr. CAREY. That is correct.

Mr. MANNING. We knew the Italians and England had construction companies who had the necessary know-how to put the refinery up, so we talked to both of them and settled on Snam Progetti, which is a subsidiary of ENI, the Italian state-owned oil company, and they offered us a very attractive package in terms of a refinery which they had designed. It was exactly what we were looking for, and Italian export financing was made available to us. The Italian Government agency Snam Progetti and the Italian bank, the Government bank, which was to finance the refinery, asked if SoCal would guarantee the paper that was going to be issued to the Government in payment of the refinery, namely 85 percent of the cost of the refinery. But one of the gentlemen who was present, of the Italian representatives, said that he also represented another branch of ENI, which was AGIP, which was the marketing arm of ENI, and he said, "In order to induce you to do this, Standard of California, we will purchase a large quantity of crude oil from you."

As Mr. Carey said, at that point in time Standard Oil of California was long on crude oil and this was a very attractive arrangement for them.

Mr. LEVINSON. By long on crude oil we mean they had excess—

Mr. MANNING. They had excess crude oil over their own requirements which they had sold others. So they accepted this proposal, and they guaranteed all of the financing.

The reason I bring this up is that none of this financing and the guarantees were arranged at our request of SoCal. This was the Italian Government's proposition to SoCal, which SoCal accepted.

Only once since then has the question come up, and when we asked the Italian Government if they would take New England's guarantee they said "Yes," so possibly they would have done so at that time, but the question never arose.

Mr. LEVINSON. Your point with respect to SoCal and the financing is that it was as much in SoCal's interest to finance it because as part of that they got a long term contract with the Italians for the supply of crude.



#### 4 RUFFS—PATS

Mr. MANNING. That is correct.

Mr. CAREY. Additional.

Mr. LEVINSON. Additional. So since they were long in crude they wanted to dispose of that.

Mr. CAREY. That is right.

Mr. MANNING. This was another method for the marketing of these amounts of crude oil that they had and at that point had not sold to us.

Mr. CAREY. And particularly in this case it was the lowest sulfur crude.

Senator CASE. Excuse me; just so I get a little better picture than I have now, Standard Oil of California produces crude oil out of the ground in California?

Mr. MANNING. No, sir. Well, they produce there, but their big reserves are in Aramco's concession in Saudi Arabia.

Senator CASE. I see.

Mr. MANNING. And there they had—

Senator CASE. That is where this surplus was coming from?

Mr. MANNING. Yes, sir. They had huge quantities of oil in Saudi Arabia which they had been unable to move because they had not located markets, and this opened up, not only that sale but any time a major oil company makes a large sale like that they hope to continue to do so, that they have got a new customer and they can keep that customer and continue to sell crude oil to them.

Senator CASE. They were not selling crude oil then?

Mr. MANNING. Yes, they were selling crude oil, yes, sir, that is why I said additional crude oil they had contracted to sell us.

Mr. CAREY. But the crude oil they were selling us came out of north Africa, out of an additional find they had in a field in Libya.

Senator CASE. Was that low sulfur?

Mr. CAREY. That was low sulfur.

Senator CASE. How about Saudi Arabia?

Mr. CAREY. That was high sulfur going to Italy.

Mr. MANNING. In the Italian market today they don't have the sulfur-emission requirements that we have in the states.

Mr. CAREY. But they are fast getting there.

Mr. MANNING. But at that time the high-sulfur crude was what the Italian market was requiring.

When we came to the finalization of negotiations, Mr. Carey said 1965, it was in 1967 and 1968 actually we signed this transaction up in 1968. SoCal said that they should have some security for this large amount of debt that they had guaranteed for New England, and that certainly seemed reasonable to us, and we set up a procedure where if we were unable, we, I say New England was unable, to pay its share of the financing, that there would be mortgage notes issued against the refinery so that if we were unable to pay any portion of the debt ultimately SoCal would own the entire refinery, and as the debt is paid down, of course, the likelihood of that becomes less and less and a considerable amount of that debt has been repaid.

Senator CASE. Then the mortgage of the refinery—

Mr. MANNING. The mortgage notes have never been issued. In other words, the mortgage notes were to be issued to the Standard of California only if New England was unable to meet the demands for payment as they are made on the notes due to the Italian banks—

Mr. CAREY. That has never happened.

Mr. MANNING. That has never happened so this procedure for the issuance of notes to SoCal has never come into being but it is a secondary device to protect them in the event New England is not able to meet its financial commitments.

Mr. LEVINSON. Who undertook the responsibility, the transport responsibility, for getting the crude from Libya to the Bahamas refinery?

Mr. MANNING. Well, the contract that was signed with the company I will refer to as Petrof is Grand Bahama Petroleum Co., that is New England's subsidiary in the Bahamas, signed in May of 1968 was for the delivered quantity of crude oil, 104,500 barrels to be—

Mr. LEVINSON. Per day.

## 5 RUFs—PATs

MR. MANNING. Per day to be delivered to the Freeport refinery by Standard Oil of California, and the price quoted in the contract was the delivered price, and that takes on some significance later on in the story, Senator. This question about the fact that we did not buy the oil in Libya, we bought the oil delivered to the Bahamas at SoCal's request.

Senator CASE. They carried it there.

MR. MANNING. They wanted to deliver the oil. They did not feel that they wanted New England in the shipping market, that this is something that was their domain to handle.

MR. CAREY. Excuse me, at this time they were also building a class of ships, and this suited them to have this business for these ships. These ships would work on a triangulated basis. They would load in the Middle East, discharge at Rotterdam, drop down to Libya, reload, go to the Bahamas and discharge, and then back to the Middle East as a very profitable run, which means that the ship is loaded on two-thirds of its voyage. There is a very, very small portion of the time when the ship is empty.

MR. LEVINSON. What would you estimate as the embedded per barrel transport cost under this arrangement to SoCal, 40 cents per barrel?

MR. CAREY. They say—in my calculations we took a number of 30 cents. At the same time that we signed, I can give you a pretty good feel on this, at the same time that we signed, this contract with SoCal we signed one with British Petroleum which was a bit different, because the British Petroleum contract was done in two parts. It had the freighting contract separate from the oil contract for the same movement from Libya, where SoCal was getting 30 cents, BP got 18 cents.

MR. LEVINSON. Per barrel, this is transport?

MR. CAREY. Transport.

MR. LEVINSON. Right. So in other words that was your control.

MR. CAREY. So the measure is right there 18 versus 30.

MR. LEVINSON. All right.

MR. HENRY. Going to these three basic relationships, the joint venture, 65-35 refinery Bahamas, the long term crude supply contract, and the tanker contract, in August of this year, when Occidental Petroleum and the Oasis Co., which is composed of Continental, American and Amerasia, as well as a small percentage of Shell, when the Oasis independents and Occidental settled with the Libyan government on a 51-percent participation, at that time—

MR. CAREY. That was 51 percent for the Libyan government, 49 percent for the companies.

MR. LEVINSON. Right. At that point what did you, when the independents settled on the participation issue as much as they had settled first 3 years before on the price issue, the question was then what was going to happen to the majors?

MR. CAREY. Well, even prior to this you must remember that the initial deal was made by the Italians, ENI had done a 51-49 deal even prior to Occidental and then Occidental followed along and then the others followed Occidental. So that you had ENI first, Occidental second, and then the Oasis group was the third group to go.

MR. LEVINSON. Well, the significance there would be that 90 percent of the companies in Libya were Americans.

MR. CAREY. That is right.

MR. LEVINSON. So Occidental was part of the Americans.

MR. CAREY. Yes, first the American companies.

MR. LEVINSON. At that time you started to read press reports that the majors were going to resist the—

MR. MANNING. In all of the newspapers, the Wall Street Journal, the New York Times, the articles began to appear and this was prior to August, that indicated that these negotiations were not proceeding as the majors had led us to believe. Early in the—

MR. LEVINSON. By the majors you mean?

MR. MANNING. In the spring—

MR. CAREY. By the majors you mean Standard of California.

MR. MANNING. Standard of California had indicated to us and our other suppliers, for example, in Nigeria they had settled on a participation—

MR. LEVINSON. Would you explain what participation is?



## 6 RUFs—PATs

Mr. MANNING. Well, the host country, in the case of Saudi Arabia and the Persian Gulf countries, had settled on a 25 percent participation over a period of time.

Mr. LEVINSON. Participation by whom?

Mr. MANNING. The Government would—meaning the Government would end up owning a share of the company itself and, in effect, would take the Government's share of the crude oil.

Mr. CAREY. Of money.

Mr. MANNING. And in some cases sell it back to the company from which they had acquired this percentage interest, and in some cases retain some amount of oil to market in their own right. They had set up national oil companies and this was a procedure for having oil for these national oil companies so they could get into business themselves and learn the marketing end of this business and, at the same time, I think they recognized that this was an awfully big bite for them initially so they wanted the private companies to buy a substantial amount of this oil back. That pattern was first set in Saudi Arabia, and then—

Senator CASE. By whom?

Mr. MANNING. By the Aramco group, that is Standard Oil of California, Texaco, Esso.

Senator CASE. The actual producing companies?

Mr. MANNING. And Mobil.

Mr. CAREY. Aramco is the producing company.

Mr. LEVINSON. These four companies own Aramco?

Mr. CAREY. Owned it.

Mr. MANNING. Owned it and they made this arrangement with the Saudi Arabian Government to take over a 25 percent equity interest over a period of time.

81 Then, in Nigeria they made an arrangement with the Government there—

Mr. CAREY. BP and Shell.

Mr. MANNING. Was 35 percent.

Mr. CAREY. Thirty-three.

Mr. MANNING. Thirty-three percent and in the normal course of events we received notice that the price of oil would go up by 2 cents per barrel because of this participation arrangement which became known in the industry as the participation price increases.

Senator CASE. Why did it go up, just because they wished it?

Mr. MANNING. Well, when the Government took its percentage oil it sold it back—

Mr. CAREY. At a higher price.

Mr. MANNING. To the private company at a higher price.

Mr. CAREY. Which it in turn passed on to the buyers.

Mr. MANNING. As part of the sale.

Mr. CAREY. Part of cost.

Mr. MANNING. Yes, sir. But as I say then when these talks in Libya started first we were led to believe that this would follow somewhat along the patterns of the Saudi Arabian and the Nigerian participation arrangements, but the press began to indicate that this was not happening; that the talks were not going well, and that the Libyan Government was desirous of acquiring 51 percent and that the four companies who had the large interests in Saudi Arabia, that is Standard Oil of California, Exxon, Standard Oil of New Jersey, Mobil, and Texas Co.

Mr. CAREY. Mobil.

Mr. MANNING. They believed that if—this is from the press. I don't believe we ever got this in direct conversations with SoCal, but these were supposed statements made by representatives of the company and, insofar as I am aware, they were never denied, that they believed if they gave into this demand for 51 percent in Libya that the arrangement they had recently concluded in Saudi Arabia for 25 percent would be upset and the Saudis would demand the same percentage as had been granted to the Libyans.

Now, their financial stake in Saudi Arabia was vastly larger than their financial stake in Libya, and it appeared that they were prepared to sacrifice their Libyan reserves and the concessions there rather than risk the breakdown of their previous negotiated transaction for participation in Saudi Arabia.

Senator CASE. Now by they you mean the four?

## 7 RUMS—PATS

MR. MANNING. The four major oil companies that owned Aramco, Senator CASE. They were the ones you were dealing through, Standard of California?

MR. MANNING. We were dealing only with Standard of California and these other three companies had what appeared to be identical interests; that they had a small interest in Libya and a vastly larger interest in Saudi Arabia.

At this point in time, Mr. Carey had one conversation with the vice president of Standard Oil Co., a gentleman by the name of Mr. Navis, whom we deal with on a day-to-day basis in the Bahamas refinery about the possibility of New England taking over the SoCal 50 percent interest in Amoseas, which was the producing company in Libya, and I believe that was the conversation Mr. Carey had and, as he reported it to me, he got nowhere.

I then went to Mr. Navis, telephoned him and told him that we saw this as a way of "saving face." If we took over the Amoseas concession, and had to give in 51 percent to the Libyan Government this would not create any precedent which would be unfavorable to SoCal's interest and the Texas company's interests in Saudi Arabia.

I had more than one conversation with Mr. Navis about this. I tried to impress upon him what we saw as the importance of this whole matter to New England because the Libyan reserves, while insignificant in the Standard Oil of California picture, were highly significant in the New England picture, and I got nowhere with Mr. Navis. He said he feared the Saudi Arabians would see this as a subterfuge and that it would not accomplish the desired result.

I then went to the attorney at Pillsbury, Madison and Sutro, which is outside counsel for SoCal, and I received what I felt was a much more realistic and sympathetic response from him. He saw what we were seeking to accomplish and, I believe, he saw there was some merit to it, that this might be a way out of this dilemma so that we could keep our crude oil source out of Libya and SoCal would not create an unfavorable precedent for its position in Saudi Arabia.

MR. LEVINSON. Now by keeping your crude oil source, you as a major supplier of east coast utilities, were also talking about your ability to meet the low sulfur requirements?

MR. CAREY. Meet our commitments.

MR. LEVINSON. Meet your commitments?

MR. CAREY. That is correct.

MR. LEVINSON. With the low sulfur crude which came from Libya?

MR. CAREY. That is correct.

MR. MANNING. Well, given the situation as it existed in August, so far as we were aware there was no other source of this low sulfur oil because all of the other producing countries had sold their low sulfur oil and it was placed in other markets, and so if New England lost its Libyan source of low sulfur oil it would be forever lost, there would be no place to turn because at this point in time the oil was short and there was no other alternate source that we could locate oil from.

So after some talks with Mr. Lane at Pillsbury, Madison, and Sutro, I ultimately came to the conclusion that we were not going to be able to work something out on this.

MR. LEVINSON. By working something out you mean a means by which you would be able to purchase it?

MR. MANNING. To purchase it, and I made it clear to him, we were ready to negotiate for the entire Amoseas concession or Standard's half of it. That we would undertake the obtaining of the Libyan Government's permission to transfer this concession and, as I put it to him, if two willing lawyers want to make a deal we could sit down in a room in 1 day and write up a piece of paper that would accomplish this. This was a gentleman I worked with on this project since 1968 and he agreed if we could get the Standard Oil management to go along we could accomplish this in a matter of a day or two because time was obviously becoming very short.

Senator CASE. When was this?

MR. MANNING. This was in August of—

MR. LEVINSON. Of 1973?

MR. MANNING. Of this year.

MR. LEVINSON. What happened with that?



## 8 RUF3-PATS

Mr. MANNING. On the Friday before the end of August—the end of August fell over the weekend—Carlyle Lane called me and said that SoCal had heard that because of some problem that Colonel Qaddafi was having in his relationships with Egypt, that he wanted to make some dramatic move immediately and they had heard the takeover date would be September 1. That would be the day on which the Libyan Government would nationalize the 51-percent interest of the companies that had not accepted the 51-percent participation.

Mr. LEVINSON. And those were the major oil companies?

Mr. MANNING. Four major oil companies that had the interest in Saudi Arabia.

That happened, and what we learned from that point until the 10th of September, we learned through the newspapers that this had happened. We called and asked the Standard Oil people, with whom we dealt, and they said, "We do not know, we have not received a copy of the decree. We can tell you nothing."

On the 10th, which was a Monday, we received a cable, a Telex, that had gone out on Friday afternoon but after the close of business in New York, because of the 3-hour time difference, our people had left the office before this Telex came in and we got it Monday morning, informing us that the government had seized 51-percent interest of the Standard Oil Co. producing company in Libya; that Standard Oil was resisting this takeover and that all deliveries of Libyan crude from Standard's supplying company would be suspended as of September 1.

Mr. CAREY. We replied.

Mr. MANNING. We replied to that that we did not agree that they were entitled to take this position, that we felt, as we saw it, certainly the 49 percent that remained in their hands was oil that was available to them and therefore it was available to New England, and that so far as the 51 percent was concerned we understood that that oil was made available to them, and we had offered in the past, as we did with our other suppliers, we had offered to pay whatever the participation increases happened to be. We had already agreed with SoCal that whatever it turned out to be, if they had to pay a higher price, we would pay it.

At the same time, of course, in almost as great a disaster to us, they, in effect, pulled the ships, they took the ships away that had been transporting this Libyan oil from Libya to the Bahamas. At that particular point in time, the shipping market was at an alltime high in the history of the shipping business because as the Libyan production had been cut during the course of these negotiations, the demand for shipping had drastically increased. The replacement oil for Europe primarily was coming out of Saudi Arabia, and the voyage is several times as long from Saudi Arabia to Europe as from north Africa to Europe. So as the crude oil, the replacement crude oil came into the market it took a great deal more shipping and had the effect of forcing the shipping rates up.

Now, at that point in time, having seen the handwriting on the wall, and having been invited to Libya to discuss with the Libyan Government the possible purchase directly from the Libyan National Oil Co. of this so-called participation crude—

Mr. CAREY. Which was the same crude which we had been buying from SoCal.

Mr. MANNING. The same crude, we had a team in Libya, and after we received the formal notice that the crude oil deliveries were suspended, and after having been told by the Libyan Government representatives that that crude oil, the so-called nationalized crude oil, would not be sold to the major oil company participants but would be marketed solely by the Libyan National Oil Co., we concluded a contract with the Libyan National Oil Co. for the purchase of approximately the same quantity of oil that we had contracted with SoCal.

Mr. CAREY. At a higher price.

Mr. MANNING. At a substantially higher price.

Now had SoCal continued to lift the 49 percent under the, of the oil that they retained we would have been glad—

Mr. CAREY. And bought back the 51 percent.

## 9 RUFS—PAT'S

Mr. MANNING. In either way we would have been glad to have taken the oil. But as we saw it we had no alternative. We had in it sets that some 20 million people depended on for their electricity. We did not feel that we could prudently sit and wait for the major oil companies to negotiate something with the Libyan Government is cause, at that point in time, you would have substantial blackouts and brown-outs in the northeast part of the United States.

Mr. CAREY. You see, we supplied the Public Service of New Jersey, Edison Co. in New York, the New England Gas and Electric System, the Philadelphia Electric Co., Niagara Mohawk System, the Orange and Rockland Counties, and when you put them altogether it is a total of about 20 million people and I think that we owed our allegiance to the 20 million people and we had to keep that going.

Mr. LEVINSON. What was the cost, the increased cost?

Mr. CAREY. Increased cost was roughly \$3.50 a barrel total, wasn't it?

Mr. MANNING. Yes.

Mr. LEVINSON. For a total price of what?

Mr. CAREY. It brought us up to 88 and some cents.

Mr. LEVINSON. In Libya, f.o.b. Libya before transportation, was it \$4.90 per barrel?

Mr. CAREY. \$4.90 a barrel at that time.

Mr. MANNING. At that point in time after the Libyan National Oil Co. transaction the f.o.b. price was \$4.90 as compared with a delivered cost in the Bahamas prior to that time of \$3.60.

Mr. LEVINSON. Now, you have now made your deal with the Libyans. You now have got the problem of getting the oil from Libya to the Bahamas.

Mr. CAREY. Yes.

Mr. LEVINSON. SoCal has pulled the ships.

Mr. MANNING. That is right.

Mr. LEVINSON. You have to go to the market when the market is at an alltime high?

Mr. CAREY. And erratic as can be, not that plentiful.

Mr. LEVINSON. That is right. So you have to go to the spot market charter as you can find it?

Mr. CAREY. That is correct.

Mr. LEVINSON. Now, what was the transport cost that you estimate, that you had to pay to get the oil here?

Mr. CAREY. I estimate we had to pay an additional \$1.75 over and above the going price now. Do you have this, have the rate from Libya to the Bahamas? It escapes me.

Mr. LEVINSON. I believe that based upon the information that your people have given us and the others the total price transport was \$1.50 per barrel.

Mr. CAREY. Yes.

Mr. LEVINSON. Assuming that SoCal—

Mr. CAREY. SoCal was moving it for something like 40 cents.

Mr. LEVINSON. Right.

Mr. HENRY. Roughly \$1.50.

Mr. LEVINSON. The incremental transport cost—

Mr. CAREY. \$1.50.

Mr. LEVINSON (continuing). Resulting from SoCal pulling the barrels was \$1.50.

Mr. CAREY. All right.

Mr. LEVINSON. Times how many barrels would you estimate?

Mr. CAREY. 75,000 barrels per day, ~~roughly~~

Mr. LEVINSON. 75,000 barrels per day for what period of time?

Mr. CAREY. Starting from the purchase in September and running right on through.

Mr. MANNING. That is right until the time they suspended delivery.

Mr. LEVINSON. So in other words, the incremental costs—

Mr. CAREY. Let me point something out to you that kind of boggles the imagination a little bit. SoCal, by giving up their Libyan concession and taking back the ships, was actually making money, you realize that, don't you, because the money they made on the ships more than paid for the concession.

Mr. LEVINSON. Yes.

Mr. CAREY. This is a unique bit of arithmetic but that is the way it turns out.

Mr. LEVINSON. Right.



## 9 RUES—PATS

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Mr. LEVINSON. Yes.

Mr. CAREY. This is a unique bit of arithmetic but that is the way it turns out.

Mr. LEVINSON. Right.

## 10 RUFFS--PATS

Now, you then had the problem, as I understand it—

Mr. CAREY. I don't think they planned it that way but that is the way it turns out.

Mr. LEVINSON. Now, what did you do with your customers in terms of—

Mr. CAREY. We notified them—go ahead, Dick.

Mr. MANNING. The first thing we did when we found out we had been cut back in August, as part of these negotiations, we had informed them of that fact and we thereafter told them of the Sept. 10 notification and we told them at that point in time we had reason to believe we would get the oil from the Libyan National Oil Co., that we believed we could continue to meet our contractual commitments only on the condition that they agreed to pay the increased costs that we sustained because we were talking about amounts of money that I believed it would be very difficult for most companies to absorb and it was far beyond our financial ability to pay these vast sums of money unless the customers would agree to pay their proportionate share of this cost.

Mr. CAREY. Just so you understand who was paying the bill, I don't want you to think the utility company was picking up the tab, they were not. The utility was paying us but they all have automatic fuel clauses and this was being paid by the individual in the street, this was being passed on right on down to the, ultimately, the fellow who is least able to pay the bill, the consumer.

Mr. LEVINSON. And that includes as well the increase resulting from the transport?

Mr. CAREY. All the way through.

Mr. MANNING. All the dollar increases, yes, sir.

Mr. CAREY. Senate, you know what the fuel clauses are in most of these utilities contracts.

Mr. MANNING. I will say the utilities told us, as did we, there were no other sources of oil and they agreed to help us.

Mr. CAREY. We offered to release them from their contracts if they had a better way of doing it but—

Mr. MANNING. But that never became a practical point and they all agreed and we also had to request that they make prompt payment upon delivery because not only did we lose the SoCal crude oil and the ships but we lost the crude credits, the credits that we were allowed in the days we bought that oil. You were given 90 days from the date of loading of the ship to pay for it.

Now that gave us just about enough time to move the oil into the Bahamas, to process it, to put it on a ship, to take it to the market, and to give the customer somewhere between 15 and 30 days' credit. But at this point in time we no longer had the credit, and I believe we computed that the increase in working capital that was brought about by this change in situation, because the Libyan National Oil Co. required prompt payment, was something in the area of \$40 million and the only source of this working capital was the utility companies themselves and they all agreed to make prompt payment upon the delivery of the oil.

That still left New England with the practical problems of having to pay for the oil promptly and to carry the working capital requirement while the oil was on the water to the Bahamas, while it was in the plant and until it reached the customers' facility, and that we absorbed.

Senator CASE. Just so I get a little bit of these figures straighter, the cost you were paying for delivery in the Bahamas was \$3.50.

Mr. CAREY. \$3.60.

Senator CASE. \$3.60 for crude oil.

Mr. CAREY. That was laid in.

Senator CASE. That was there.

Now, after all this business how much did the crude oil delivered there cost you?

Mr. MANNING. \$1.90 in Libya.

Senator CASE. I know but how much?

Mr. MANNING. Plus \$1.90, roughly \$1.90.

Senator CASE. That would be \$6.80, right. So it was—

Mr. MANNING. Yes, sir.

Senator CASE. It was almost twice as much per barrel.

Mr. CAREY. That is correct.



## II RUFFS--PATS

MR. MANNING. That is correct.

Senator CASE. Per barrel.

Now this \$40 million, what is that, is that a constructed figure?

MR. MANNING. It is the constructed figure of the amount of working capital that would have been required if New England paid for the oil promptly upon lifting in Libya as opposed to 90 days' credit.

Senator CASE. So it is the income on the \$40 million—

MR. CAREY. No.

MR. MANNING. No, sir, it is the actual dollars.

MR. CAREY. It is like paying cash on the barrelhead for the oil.

Senator CASE. Is this at a particular time?

MR. MANNING. The difference was, Senator, prior to the September 1 cutoff—

Senator CASE. You did not have to pay so soon.

MR. MANNING. We had 90 days.

MR. CAREY. Ninety days credit.

MR. MANNING. By the end of 90 days, give or take a small amount of time, we would have collected the funds from the customer.

MR. CAREY. So it was a passthrough.

MR. MANNING. With which to pay for the crude oil. We were all of a sudden faced with the situation where we were paying cash for the crude oil. You have about 2 weeks of the crude oil on the water to the Bahamas, you have time in the plant and you have nearly a week to get it out.

Senator CASE. All I am trying to do is convert this in some rough way to the price of the oil. This means you had to pay \$40 million worth of money.

MR. MANNING. That is correct.

Senator CASE. What did you pay?

MR. MANNING. Well, the utilities stepped in and paid it.

MR. CAREY. The utilities stepped up and they laid the money out.

Senator CASE. You mean—

MR. CAREY. They actually advanced the money as they got the oil.

Senator CASE. I see.

MR. CAREY. So we ourselves laid out part of it, they laid out the major portion of it but somebody paid money at the rate of 10 percent.

Senator CASE. For how much?

MR. CAREY. For \$40 million. I mean the going rate of interest at that time was around 10 percent.

Senator CASE. How do you translate that into costs per barrel of oil?

MR. CAREY. Well, you can convert it into 10 percent per year, that is, on \$40 million that is, \$4 million, and divide \$4 million into the number of barrels you got per year.

Senator CASE. How many per year?

MR. CAREY. 75,000 barrels per day.

MR. MANNING. Senator, that might be a little misleading because we did not pass on, there is no mechanism for our asking the utility to pay our increased working capital.

MR. CAREY. But, Dick, even if you did not he had to borrow the money. He had to pay it.

MR. LEVINSON. That gets paid through the rate system.

MR. CAREY. Somebody had to pay it.

Senator CASE. How much was it? 75,000 barrels a day is how many a year, quickly you eagles.

MR. HENRY. Could you provide us with those figures?

MR. CAREY. We can work it out now: 75,000 barrels a day—

Senator CASE. Three-quarters of 360 that would be 8250, and add a lot of zeros. How many zeros?

MR. CAREY. Work it with 10's so it is easier.

MR. LEVINSON. \$29,375,000.

Mrs. LEWIS. But you have to divide that by 4 because we are talking about 90 days credit and zero credit.

MR. CAREY. No, \$40 million.

MR. LEVINSON. You have to roll it over.

MR. CAREY. It is a constant number.

Senator CASE. You are talking about \$40 million and some percentage of that, how many barrels?

MR. CAREY. It does not make any difference because you have it.

Exhibit 1 to Sokolow Affidavit—Senate Testimony

'12 RUFF—PATES

Senator CASE. It is one-quarter of \$4 million.

Mr. CAREY. No, it is \$4 million. Because if it is \$40 million constantly at 10 percent.

Senator CASE. You get 20 million barrels of oil, right?

Mr. LEVINSON. Right.

Mr. CAREY. You are trying to break it down so much per barrel?

Senator CASE. Yes.

Mr. CAREY. I see.

Mr. MANNING. But the cost per barrel on the interest of that money is minuscule compared to the dollar cost of the oil plus transportation actually would hardly see it in an increase of this magnitude. It would be a very small amount. It would be a big amount to us but it would be a small amount in terms of—

Senator CASE. Roughly 7½, 8 cents, something like that.

Mr. MANNING. Yes.

Senator CASE. Thank you. I was just trying to get an idea of what this stuff means.

Mr. HENRY. On September 13, by their time 2 days after you received formal notice, you had had your crude supply contract and your tanker—2 days after you had made your direct, you had received notice of the Force Majeure then being invoked and ships had been pulled and the crude contract was cut at that point, according to our conversations, you received three consecutive telephone calls from representatives of Tex. co, Standard Oil of California, and the State Department in which you were discouraged from—

Mr. LEVINSON. Why don't you tell us what took place?

Mr. MANNING. On the 13th of September I was in the New England offices, I was in the office of a Mr. Weinand, who is a vice president, and he received a call from Mr. Folmer of the Texas Co., who identified himself as being the chairman of the Texas Overseas Oil Co., and he told Mr. Weinand that New England had, according to their information, put a ship into Libya to lift oil which had been taken from the Amoseas Co., in which the Texas Co. had a 50-percent interest. That this oil still belonged to the Texas Co., and that if New England lifted this oil, that the Texas Co. would pursue all legal remedies to prevent the use of this oil by New England.

Mrs. LEWIS. The Texas Co. is Texaco?

Mr. MANNING. Texas Co. is a partner in Amoseas with Standard Oil of California. The Libyan Co. took over 51 percent. We were a customer of Standard Oil of California. This was a common stream oil.

Mrs. LEWIS. Why didn't Standard Oil of California object?

Mr. MANNING. Just a minute.

Within a matter of, it seemed like, minutes, perhaps a half hour, Mr. DeBaun who is another of New England's vice presidents, received a telephone call from Mr. Xavis whom I have previously identified as being the representative of SoCal.

Mr. CAREY. Vice president.

Mr. MANNING. Vice president—as the gentleman we deal with on a day-to-day basis on matters affecting our relationship with SoCal.

As Mr. DeBaun described the conversation to me—and as he subsequently wrote a memorandum I believe you have seen—the conversations were so nearly the same as it to believe that these two speakers, the Texas Co. representative and the SoCal representative, were reading from the same script. It was the same conversation: "We understand that you put a ship into Libya," incidentally named the Nepco Courageous, and this was the first cargo of oil lifted from the Libyan National Oil Co. and, as I say, these statements made over the telephone were subsequently made a matter of record by letters from both Texaco and from SoCal.

e/ Within another approximate 30 minutes, another telephone call came in—this time to Mr. Weinand—from a Mr. Mau of the State Department. Mr. Mau's conversation was essentially the same as the previous two except instead of saying that legal actions would be taken to preserve the rights of these companies, we were told that the State Department felt this was the wrong thing for New England to do, that this would have repercussions in the Middle East, and that the State Department opposed this action.

Mr. CAREY. They went further than that. Didn't they say in the event of any litigation—



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Mr. MANNING. I think that happened next. Because I then called Mr. Mau in order to elaborate upon our position. I did not believe that the State Department had all the facts before them and I thought after a conversation with Mr. Carey we felt that it would be best if we presented our story and told them our side of this problem, and I called Mr. Mau. Mr. Mau did not return my call but, in a matter of a couple of minutes, a Mr. Schweibel, who identified himself as an attorney in the State Department dealing with—first, I explained to Mr. Schweibel New England's position that we did not see—

Senator CASE. Excuse me, this was on the telephone?

Mr. MANNING. Yes, sir, this is on the telephone, that New England did not see that it had any practical alternative but to purchase this oil from the National Oil Co., that SoCal, our supplier, had terminated deliveries to us, and that this would mean substantial brownouts or blackouts on the east coast if New England essentially went out of business so far as Libyan oil was concerned; that this very low sulfur oil that we were purchasing had been purchased specifically for these markets to meet the environmental requirements; that there was no other oil available so far as we were aware, and that we believed that it was in the best interests of the consuming public in the area that we served that we take the steps we had.

I told him if the State Department wanted us to stop picking up the oil and shut down the utilities in the east coast—the area that we served—that we would have to be formally notified by the elected representatives of the people, that we were not going to make this step without being told this was what the Government of the United States decided.

Senator CASE. Whom did you have in mind then?

Mr. MANNING. It would have been a very high officer, Senator, because to shut down the city of New York is to us a monumental decision that we in the New England group—Mr. Carey and everybody else who works in that company—would not do without literally being enjoined.

Senator CASE. I am not in disagreement. You mean the President?

Mr. MANNING. The President.

Mr. CAREY. It was more than the city; it was the State of New Jersey as well; let's not leave them out.

Mr. LEVINSON. If I might interrupt for a minute. If you had not been able to meet your contract commitments to the utilities therein, of course, you would not have been able presumably to meet the payments on the debt which had financed the refinery, and under the previous arrangements which you have described as to the debt arrangements also presumably—and please correct me if I am wrong—the ownership of the refinery would then have devolved to SoCal; is that correct?

Mr. MANNING. Over a period of time, as the payments due to the Italians' banks fell due, if the revenues had not been produced from the crude oil produced in the refinery, we would have had no other source of payment. We had other crude oil but not a sufficient quantity to continue operating at a profitable level, which would have meant we could not meet our financial obligations, and SoCal, through this arrangement, through the mortgage notes, would ultimately have moved into a greater and greater equity percentage in the refinery.

Mr. LEVINSON. Right.

Senator CASE. Those are in the Bahamas.

Mr. MANNING. Yes, sir.

Mr. LEVINSON. Just now to pick up the narrative: You have now had these conversations with Texaco, with SoCal, and with Mau and Schweibel in the Department of State.

Mr. MANNING. Let me just add this: This was the point Mr. Carey brought up. At this point Mr. Schweibel told me in the event a lawsuit was brought by any one of the major oil companies whose interests had been nationalized in Libya and who had resisted nationalization, if any lawsuit was brought against us in the United States, the State Department, if requested, would intervene and take a position that this oil had been illegally seized and the courts should, under the Act of State doctrine, decide the issue of the legality of the nationalization.

Mr. LEVINSON. Now, would you just briefly summarize the Act of State doctrine?

#### 14 RUFS—PATS

Mr. MANNING. As I understand the Act of State doctrine, in the event a case is brought in a U.S. court in which the title to a product produced in a foreign country is in issue, the U.S. courts, as a matter of policy enunciated by the Supreme Court of the United States, will not take jurisdiction and decide the legality of the takeover. They will assume that the foreign government acted in a legal manner, unless the State Department intervenes in the case and asks that the U.S. court decide the question of the legality of the takeover of this particular asset by the foreign government involved.

Mr. LEVINSON. And Schwedel was, in effect, informing you that they would advise the court that the court should rule.

Mr. MANNING. The court should take jurisdiction. In the initial instance, the court would simply dismiss the case unless the State Department intervened.

Mr. LEVINSON. Right. Now, was a suit subsequently brought against Nepco?

Mr. MANNING. Not in the United States.

Mr. LEVINSON. Was a suit brought outside the United States?

Mr. MANNING. A suit was initially brought against a refinery in Cagliari, Sardinia, a refinery with which a New England subsidiary had a processing arrangement, that is we took crude oil and put it in this refinery and the refinery refined it under contract and delivered back products.

Mr. LEVINSON. Who brought that suit?

Mr. MANNING. That suit was brought by Texaco and SoCal subsidiaries against the refinery initially. This was the refinery that had possession.

Senator CASE. What did they think, that you owned the refinery?

Mr. MANNING. No, sir this was a transaction but I think their theory was that they were bringing suit against the custodian of the oil in effect. Once the oil was put in the refinery they were informing the custodian that we, the people who had put the oil in the refinery, did not have valid title to that oil. Subsequently, a New England subsidiary was impleaded in that case, and is now a defendant in that case in Sardinia.

Mr. LEVINSON. Was there a further suit brought by another major oil company?

Mr. MANNING. There was a suit brought by Mobil in the Bahamas against New England—against a New England subsidiary in the Bahamas.

Mr. CAREY. We don't know how Mobil fits into this picture.

Mr. LEVINSON. That was my next question.

Mr. MANNING. As I understand the situation the terminal in Libya from which this oil was lifted is operated by the Mobil Oil Co. under a joint arrangement with the other producers. Mobil took the position that a New England subsidiary had purchased oil that belongs to Mobil. Now the type of oil that we purchased from the Libyan National Oil Co. was not the type of oil that had previously been produced by Mobil, and the best thing we can determine is that Mobil, which operated the terminal, put the wrong oil on the ship and now they are claiming against us for this oil, and our position is we don't have any—don't know anything about Mobil's position.

Mr. CAREY. Excuse me, we sent Mobil a telegram and we said "We don't know what your interests are here. Please explain what it is you want and we will try to define what it is that we are doing and where you stand." We have never received a reply to this telegram.

Senator CASE. Were these suits brought in foreign courts?

Mr. CAREY. Yes.

Mr. MANNING. I think there has been a third suit filed in the Bahamas by Texaco.

Senator CASE. This was to get away from the doctrine of State action?

Mr. CAREY. No, this is where the ships were headed, this is where the ships discharged the crude oil. They followed the ships carrying the crude.

Mr. MANNING. I do believe they have, Senator, a technical legal problem about getting the jurisdiction of a U.S. court because the contracting party is a Bahamian corporation, a subsidiary of New England. It does not do business in the United States, and you would have a long drawn out jurisdictional battle in the first instance as to whether or not New England's Bahamian subsidiary is amenable to service here.



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Mr. LEVINSON. Do you have an opinion as to whether or not possibly Mobil and SoCal are colluding so that the suit is brought by Mobil rather than SoCal?

Mr. CAREY. I have no opinion on it but I will let the appearances stand on their own two feet.

Mr. LEVINSON. Are you conversant with other suits which have been brought involving similar circumstances involving other independents?

Mr. MANNING. Our position is there are no similar circumstances. We purchased the same identical oil that we were theretofore purchasing. We simply went to the party in the country that claimed title to the oil under a decree that was issued by a sovereign government, and under representation by that government's oil arm that it had title to the oil, and it was the only one that had the oil, and we purchased that oil, we believe we purchased it legally. We don't believe there is anyone else in that situation.

Mr. CAREY. Let me point out a strange thing to you. Supposing that SoCal was successful in Sardinia in winning this suit and gaining possession of that oil, what do you think we would do? We would immediately file suit to get possession of that oil again under our other contracts because they owe us that oil under the other contract. It is kind of like chasing their own tail.

Mr. MANNING. Our position is that if it is their oil they owe it to us.

Mr. CAREY. That is correct.

Mr. MANNING. If it is not their oil we purchased it legally. Either way the oil is ours.

Senator CASE. May I just throw this out, as I understand you got this notice when the Libyan Government took over.

Mr. MANNING. Yes, sir.

Senator CASE. You got the 51 percent.

Mr. CAREY. That is correct.

Senator CASE. And you got this notice from Standard Oil of California.

Mr. MANNING. Yes, sir.

Senator CASE. That refused to sell any oil at all?

Mr. CAREY. That is right.

Mr. MANNING. Suspended all delivery.

Senator CASE. Even though they would not lose the 49.

Did they still take this 49 percent of the oil?

Mr. MANNING. Surprisingly enough, Standard Oil of California was the only one of the four major oil companies that did not. As we understand it, and I was informed by Mr. Schweitzer at the State Department, that the other three major oil companies, Texaco, Esso, and Mobil were continuing to lift their 49 percent oil. SoCal did not lift any until fairly recently. They nominated, this was about 3 weeks ago, they nominated one ship into Libya and the Libyans accepted it. It was right before the boycott.

Senator CASE. Did they offer it to you?

Mr. MANNING. Yes, sir. They did.

[Short recess.]

Senator CUTLER [presiding]. Why don't you just continue then, gentlemen, to complete this story.

Mr. LEVINSON. Just to complete the story, Mr. Manning, did you communicate with the State Department your view then in writing as to what the legalities were and what the position of Nepeco was?

Mr. MANNING. In my letter dated September 15, 1973, which was hand delivered to the State Department, I set forth what I believed was a fair statement of our views and the events that had taken place up to that date, and I attached copies of the critical correspondence between the parties concerned.

Mr. LEVINSON. Will you please review these copies and see whether or not those are the documents as to which you refer.

Mr. MANNING. Yes, sir.

Mr. LEVINSON. Mr. Chairman, I would like to move that these documents be made a part of the record at this point.

Senator CUTLER. Very well.

Exhibit 1 to Sokolow Affidavit—Senate Testimony

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[The documents referred to follow:]

MANNING, CARLEY, REDMOND & TULLY,  
New York, N.Y., September 15, 1973.

Hon. HENRY A. KISSINGER,  
Secretary of State, State Department,  
Washington, D.C.

DEAR SIR: This firm represents New England Petroleum Corporation ("NEP"), a New York Corporation with its principal office at 825 Third Avenue, New York City. We are also special counsel to NEP's Bahamian subsidiary, Grand Bahamas Petroleum Company Limited ("Petco") of Freeport, Bahamas. Petco is a 65% partner, together with a subsidiary of Standard Oil Company of California ("Socal"), in an oil recovery at Freeport, Bahamas.

On September 13, 1973, a telephone call from Frank Man, Esq., of the Oil and Gas Section of your Office was received by Richard G. Weinand, Esq., Vice President of NEP. In summary, the conversation was reported to have been along the following lines:

(1) The recent nationalization by the Libyan Government of 51% of certain oil companies (including the interests owned by the Texas Company ("Texas") and Socal) was illegal and causing problems and legal complications.

(2) Your Office had been advised that the "NEPCO COURAGEOUS", owned by an NEP subsidiary, was loading crude oil taken by the Libyan Government from tanks owned by Texas and Socal.

(3) If current negotiations between the major oil companies and the Libyan Government fail, Texas and Socal intend to pursue the oil taken from them.

(4) Your Office is extremely concerned about these developments in Libya as they might cause similar actions in the Persian Gulf.

Later, on the same day, I called Mr. Man, who did not take the call, and later received a call from a Mr. Schwedel of your Office. The following points were made to him which I wish to bring to your attention:

(1) The crude oil—Anna—purchased by Petco from the Libyan National Oil Company and loaded aboard the "NEPCO COURAGEOUS" is the same crude oil which Petco has been purchasing from Socal's subsidiary under long term contract since 1970. We believe Petco is the largest purchaser of Anna crude oil.

(2) Such crude oil, with the full knowledge of Socal, was purchased for the express purpose of refining it in the Bahamas and then supplying the products therefrom, primarily Low Sulfur Fuel Oil, to Con Edison of New York (of which NEP is the largest supplier), Long Island Lighting Company (of which NEP is the sole supplier), Orange and Rockland Utilities (of which NEP is the largest supplier) and other East Coast utilities.

(3) When NEP and Petco received notice from Socal that it was suspending deliveries of Anna crude oil, they advised Socal that they did not consider that Socal was entitled to suspend deliveries under the "Force Majeure" provisions of Petco's crude oil contract because (i) the Libyan Government had taken no action with respect to 49% of Socal's interest in the crude oil and (ii) Petco had previously agreed to pay Socal any increase in "Government take" on the crude oil supplied by Socal. Indeed, Socal had requested and Petco had agreed to pay any increase in crude oil cost resulting from Government "participation" in the Socal Libyan interests. By this, Petco was led to believe that Socal anticipated, and was prepared to accept, Government "participation" so long as Petco, the customer—not Socal—bore the cost. Moreover, since Petco and NEP were aware of the fact that four American companies in Libya (Occidental Petroleum and three members of the "Oasis Group") had accepted the offer of the Libyan Government for compensation, there did not seem to be any cause for complaint as to "illegal seizure" without just compensation.

[Indeed, Dr. Hammer of Occidental Petroleum stated in a televised interview that the Libyan nationalization "will not cause Occidental any loss, and we are \$135 million better off than we were before." Also, he reported that the Libyan Government had increased Occidental's production by almost 50%.]

Socal was also informed that it appeared possible that its action in Libya was taken to protect its interests elsewhere than in Libya (i.e., the Persian Gulf) in which case it had no right to invoke the "Force Majeure" provision of its contract with Petco.

(4) Promptly after NEP and Petco received notice of the suspension of deliveries of Anna crude oil by Socal and were told that no replacement oil was available from Socal [a fact I did not know when I talked with Mr. Schwedel], they sought to obtain the oil urgently required to meet the needs of their customers—which, being public utilities, are heavily obliged to serve the public. The only source of such replacement crude oil was the Libyan National Oil Company, and, having no choice if power "blackouts" were to be avoided, Petco purchased the required crude oil (the same crude oil it had purchased historically) from the Libyan National Oil Company.

(5) NEP and Petco intend to continue to make every effort to meet their primary obligation to supply the requirements of their customers and the public unless prohibited by Government order or a court of competent jurisdiction. They intend to resist any effort of these major oil companies, Texas and Socal, to sacrifice the public interest to their financial interests. If the flow of oil is to be stopped by action of such major oil companies or by action of your Office we want the public to be fully aware of the responsible party. Surely, a way should be found to permit this essential crude oil to flow without compromising the legal position of the major oil companies involved in such disputes.

It is indeed shocking that throughout this dispute none of the major oil companies involved (whose profits on which practically no U.S. tax is paid—are at record high levels) have given any indication whatsoever of any concern as to the damage to the public which will result if their positions are sustained. Your Department, in supporting the position taken by these major oil companies, seems to be of the same disposition.



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We wish to emphasize that NEP and Petco are buyers of crude oil and sellers of refined products; they do not wish to become engaged in any dispute between the major oil companies and the Government of any producing country, as to which of them owns the oil purchased in good faith to supply utility customers so that the public interest can be served.

Indeed, it would appear that Socal, which is so highly concerned about the asserted failure of the Libyan Government to conform to its contract with Socal, is not similarly concerned with what appears on its face to be a breach of its contract with Petco. Sanctity of contract, if it is to be observed, as indeed it should, should be applied equally to all, not just to those the major oil companies wish to apply it.

Where the interests of the public are so vital, and so clearly at stake, the sanctity of the Petco-Socal contract would appear to be paramount. We hope that your Office will be able to appreciate this and act accordingly.

For your information, I have enclosed copies of the following:

(a) Telex from Socal to Petco, dated September 7, 1973 (received September 10, 1973).

(b) My letter response to Socal dated September 13, 1973 (transmitted to Socal by telecopier the same day).

(c) Telex from Socal to NEP, dated September 14, 1973.

(d) My telex response to Socal dated September 14, 1973.

(e) Socal's response thereto, dated September 14, 1973.

(f) Letter from Texas Overseas Petroleum Corporation, dated September 13, 1973.

(g) My letter of response dated September 15, 1973.

Very truly yours,

RICHARD DEY. MANNING.

CHEVRON OIL TRADING CO.,  
San Francisco, September 7, 1973.

Tex 7105814357 NEPCO NY  
NEPCO  
NYK

GRAND BAHAMA PET. CO., LTD.,  
c/o NEPCO, New York,  
J. F. GREENE, Jr.,  
Freeport.

GENTLEMEN: We regret it is necessary to inform you that effective September 1, 1973, the Libyan Government nationalized 51 percent of our supplier's operations. Our supplier does not recognize the validity or legality of the nationalization decree. The Libyan Government has refused to permit our supplier to continue to load vessels unless it acknowledges that 51 percent of the oil to be loaded is owned by the Libyan Government. Accordingly, to protect our interest, our supplier has been forced to cease loading crude oil in Libya.

Accordingly, pursuant to section 12.01 and section 13.04 of our contract with you, dated May 7, 1968, as amended, we hereby advise you that sales and deliveries to you of ~~crude~~ Libyan crude oil under said contract are suspended for all loadings scheduled to commence after August 31, 1973.

We will keep you advised of any changes in our situation as they occur.

R. A. MENNIS,  
Chevron Oil Trading Co.

MANNING, CAREY, REDMOND & TOLLY,  
New York, N.Y., September 13, 1973.

CHEVRON OIL TRADING CO.,  
San Francisco, Calif.

(Attention: R. A. Mennis, Esq.)

DEAR SIR: In your telex of Friday, September 7, 1973, which was received by NEP and Petco on Monday, September 10, you advised that, pursuant to Section 12.01 and 13.04 of the Petco-Chevron Contract of May 7, 1968, you were suspending all loadings of ~~crude~~ Libyan crude oil on and after September 1, 1973.

Your telex states that the Libyan Government has nationalized 51% of the operations of your supplier (a company I understand to be owned in part by you or your affiliates).

I do not have available all relevant details; however, on the basis of such information as I do have, it appears to me that you do not have a valid basis for invoking the provisions of Section 12.01.

As I read Section 12.01, it relieves you of your obligation to sell and deliver oil "to the extent that" one of the enumerated events "prevent, restrict, or delay" performance. Such does not appear to have occurred at least with respect to 49% of your supplier's Libyan production. Therefore, Section 12.01 has not applicability to that amount of oil.

So far as the position of you or your supplier relates to the 51% interest which was nationalized, I do not know what your arguments against such action might be, but I cannot agree that you or your supplier has the right to terminate deliveries to Petco, even of the production from the 51% interest which was nationalized, if a fair compensation was offered for the interest so nationalized, which several American interests in Libya seem to have found the amount offered by the Government to be; and that such oil was offered by the Government to your supplier as we understand it may have been.

It was my understanding that Petco undertook to pay you any increase in price which might result from Government "participation" regardless of the percentage, which would tend to confirm that you and your supplier contemplated some such action by the Government and were prepared to accept it.

Exhibit I to Sokolow Affidavit—Senate Testimony

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In addition, it would appear to me that the position of you and your supplier was taken to protect your interests elsewhere than in Libya. If such was the case, of course Section 1201 confers no right upon you to take the action taken. I am sure you can appreciate this action by you and your supplier has caused considerable disruption in the supply picture of, and potential irreparable damages to, Petro, NEP and their customers.

Very truly yours,

RICHARD DEY, MANNING.

E. M. CAREY,  
NEPCO New York:

As I advised Debaum earlier today, California Asiatic has sent a letter today to Grand Bahama Petroleum Company, LTD in Freeport as follows:

"California Asiatic Oil Company (Calasatic) wishes to give note to you as follows:

"It has been brought to our attention that you have purchased or may be arranging for the purchase, acquisition or disposal of crude oil illegally confiscated by the Libyan Government which has produced from concessions in Libya jointly owned by us and Texaco Overseas Petroleum Company (TOPCO), and as to which crude oil Calasatic and TOPCO have all rights of ownership. The illegality and invalidity of the purported seizure of our properties is recognized by the United States Government. Any purchase, acquisition or disposal of any action in aid of such purchase, acquisition or disposal of such crude oil without our express permission is contrary to the governing principles of law and we inform you that we will take such action as may be considered necessary in order to protect our rights including rights to such crude oil or products manufactured or derived therefrom and their proceeds."

We are profoundly shocked by the action your company is reported to have taken.

In view of the illegal and arbitrary nature of the Libyan Government's action, the overall oil situation, the position of the United States Government and particularly in light of our relationship, we would consider any such action by your company extraordinary and inexplicable. We strongly urge you immediately to look into the situation and take steps to disengage your company from any involvement of this nature.

H. A. NAVIS.

SEPTEMBER 14, 1973.

Mr. H. A. NAVIS,  
Nepco, New York:

In response to your telex of September 14, 1973, to Mr. E. M. Carey, and on behalf of Grand Bahama Petroleum Company, Limited, (PETCO) and New England Petroleum Corporation (NEP), your express permission is requested for PETCO to purchase, acquire and otherwise dispose of in its normal operations (including sale of products therefrom to NEP and other customers) Libyan crude oils which you assert to have been "illegally confiscated" by the Libyan Government.

In considering this request, please recognize that:

1. PETCO and NEP are not parties to your dispute with the Libyan Government and do not want to be the victims of such dispute; nor do they know whether your assertion of "illegal confiscation" is correct. Such a determination can only be made by a court of competent jurisdiction, which may take months or years.

2. I have advised PETCO and NEP that, not only because of contractual commitments but because of representations made to regulatory bodies, they have an obligation to their customers to purchase replacement crude oil, if such is available, from the Libyan National Oil Company or any other supplier, in order to prevent power "blackouts" or other disruptions which will otherwise result.

3. PETCO and NEP have no desire to act in any manner contrary to your company's best interests except where forced to do so by what they believe to be their obligation to maintain the supply of essential products to their customers from available crude oils.

Your soonest reply will be appreciated.

Regards,

RICHARD DEY, MANNING,  
Counsel to PETCO and NEP.

STANDARD OIL OF CALIFORNIA,  
September 14, 1973.

RICHARD DEY, MANNING,  
Nepco, New York:

In reply to your September 14 telex on behalf of Grand Bahama Petroleum Company, Limited and New England Petroleum Company, we do not repeat not give the permission you have requested.

H. A. NAVIS.

TEXACO OVERSEAS PETROLEUM CO.,  
New York, N.Y., September 13, 1973.

NEW ENGLAND PETROLEUM CORP.,  
New York, N.Y.  
(Attention: Mr. Edward N. Carey, President.)

GENTLEMEN: This will confirm my telephone conversation with Mr. R. G. Weinand earlier today during which I drew his attention to the fact that the vessel "NERCO COLOMBIA" is presently berthed at his canal terminal in Libya preparing to take aboard a cargo of 320,000 barrels of Anna crude oil belonging to Texaco Overseas Petroleum Company (TOPCO) and California Asiatic Oil Company (CALASATIC). We are advised that the consignee of this cargo is the Libyan National Oil Corporation (LNOC).



Exhibit 1 to Sokolow Affidavit—Senate Testimony

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NOC is claiming title to this crude oil on the basis of a nationalization decree, which decree you are advised is in violation of TOPCO's contractual rights and established principles of International Law.

NOC has instructed the operator of the port, Mobil Oil Libya, to load this cargo from the terminal avails of TOPCO and CALASIATIC. Both TOPCO and CALASIATIC have objected to this loading and have advised the Libyan Government and its agents that they will pursue all legal remedies available with respect thereto.

According to our information, the consignee of this cargo is the Grand Bahamas Petroleum Co. Ltd., which we understand is your subsidiary. You are hereby put on notice that TOPCO plans to pursue every legal remedy available to recover such crude oil and protect its legal rights in this respect.

Very truly yours,

L. W. FOLMAR,  
Chairman of the Board.

SEPTEMBER 13, 1973.

TEXACO OVERSEAS PETROLEUM Co.,  
New York, N.Y.

(Attention: L. W. Folmar, Esq., Chairman of the Board.)

GENTLEMEN: In response to the letter dated September 13, 1973 (received by hand on September 14), from L. W. Folmar, Chairman of the Board of your Company, to New England Petroleum Corporation ("NEP"), our client, and your earlier telephone call to Mr. Weinand, Vice President of NEP, which conversation has been reported to us, this will advise you as follows:

1. Your Company asserts that the NOC decree under which NOC claims title to the oil sold to NEP's subsidiary, Grand Bahamas Petroleum Company, Limited ("Peteo") "is in violation of TOPCO's contractual rights and established principles of International Law". Since NEP and Peteo are not parties to the contractual agreements between your Company, its subsidiaries or affiliates, and the Libyan Government, they nor we have any way of knowing whether or not your assertion is correct. We can state with assurance, however, that such matters are usually determined by courts of competent jurisdiction on the basis of the facts and law and not on the basis of unilateral pronouncements by interested parties.

2. We know nothing about, nor are we concerned with, NOC's instructions to Mobil Oil Libya or what advice your Company may have given to the Libyan Government about your intentions. NEP and Peteo are not involved in the dispute your Company has with the Libyan Government nor do they intend to become "pawns" in such dispute or victims of it. The crude oil Peteo lifted in the "NEPCO CONTRACTS" is the identified crude Peteo has been purchasing under long term contract with Chevron Oil Trading Company ("Chevron") since 1970. Chevron has discontinued deliveries to Peteo (apparently as a result of the same dispute your Company has with the Libyan Government) in spite of Peteo's undertaking to pay any increases in "Government take" suffered by Chevron, including increases due to Government "participation". Peteo is obliged to seek replacement of that crude oil from whatever source may be available. In this case, the only similar crude oil available was offered by NOC.

3. In connection with your assertion that your Company will "pursue every legal remedy available to recover such crude oil and protect its legal rights in this respect" we wish to repeat that neither NEP nor Peteo is a party to your dispute with the Libyan Government, nor do they wish to be. They do not wish to do anything which will be in derogation of any rights your Company may have against the Libyan Government or any one else, for that matter. However, we wish to let you know that the Arab crude oil previously supplied by Chevron to Peteo was, with Chevron's full knowledge, used primarily to supply low sulfur fuel oil to Con Edison of New York, Orange and Rockland Utilities, Long Island Lighting Company and Public Service Electric and Gas of New Jersey and other East Coast utilities. Unless the replacement oil secured by Peteo from NOC is allowed to move unimpeded into Peteo's refineries and the products therefrom to move to such customer's tanks, there is no question that severe power "black-outs" will occur on the U.S. East Coast, involving some 20,000,000 people or more (in this regard I refer you to an article which appeared in the press as a result of our informing Con Edison of New York of the action taken by Chevron in suspending deliveries to Peteo). I would suggest that the interest of the public—which Peteo and NEP are endeavoring to protect—be considered in any action your Company proposes to take, perhaps ahead of the financial interests of your Company.

Very truly yours,

RICHARD DEY, MAXXING.

Mr. LEVINSON. There is just one more point which we would like to cover and then we will ask Mr. Carey whether there is anything that we have omitted which he thinks is relevant which ought to be made part of this record.

Mr. HEXLEY. Did the State Department ever, in its communications with Nepeco, assert that Nepeco purchased its oil in Libya from the Libyan National Oil Co. at a discount?

Mr. MAXXING. I was told of that by a member of the firm of Gadsby and Hannah, Washington representatives for New England, that this had come out in the course of a conversation with Mr. Schwebel, and I responded that it was not true, but that if we could have purchased it at a discount, we would have been glad to do so, because it would have reduced the price of the product to the consumer. We bought the oil at the cheapest price available, and if it had been available at a lower price, we would have bought it.

## 20 RUFs—PATS

Mr. CAREY. Our dissertation is, despite this, we did not buy it at a higher price.

Mr. LEVINSON. I would like to ask this one question and ask Mr. Blum whether he has a question. Have you been able to lift oil from Libya?

Mr. CAREY. We have been able to lift oil from Libya, most of it is going through our Sasas processing arrangement in Italy, but the answer is yes, we have been able to lift oil from Libya.

Mr. LEVINSON. Thank you.

Mr. Blum?

Mr. BLUM. First, when you talked to the State Department, was reference made to the Foreign Assistance Act, section 620, which permits the State Department to intervene to get the court to take jurisdiction. Did they invoke that section or say it would be invoked?

Mr. CAREY. I did not talk to them.

Mr. MANNING. No.

Mr. BLUM. Was there any reference to it?

Mr. MANNING. Not that I recall. It was just a general statement by Mr. Schwebel that the State Department would intervene if requested.

Mr. BLUM. Did the State Department in any way characterize what had happened in Libya as a taking without compensation—a nationalization without compensation?

Mr. MANNING. I believe in substance that Mr. Schwebel did make that statement and I told him that we could not agree because a number of American oil companies over there had accepted the compensation that was offered. There was no question of compensation that was offered. The only question was whether the compensation was adequate and a number of the companies there had apparently found that compensation adequate and Dr. Hammer, on a national television program, had said his company was making more money after the 51 percent nationalization than before.

Mr. BLUM. In other words, there is no question that compensation was to be paid for the Amosco concession? The issue was its adequacy in the eyes of Standard of California and Texaco and there were other companies who had said, "Yes, indeed, this is adequate compensation."

Mr. MANNING. That is correct.

Mr. BLUM. Precisely the same terms.

Mr. MANNING. As I understand it, they were all offered the same compensation arrangement and the companies that accepted it apparently found it so and, as I say, Dr. Hammer so stated.

Mr. BLUM. So if one were to summarize the situation, Libya had oil which it was willing to sell through its national oil company. It had taken this oil with compensation?

Mr. MANNING. With an offer of compensation.

Mr. BLUM. With an offer of compensation, Nepeco wanted to buy it, had 20 million customers who were quite anxious to receive it.

Mr. CAREY. No.

Mr. BLUM. Had 20 million utility consumers?

Mr. MANNING. Dependent on it.

Mr. BLUM. So Cal, Texaco, and the State Department said it would be improper for you to buy it.

Mr. MANNING. Yes, sir.

Mr. CAREY. That is correct.

Mr. LEVINSON. The last question, just to complete the record: Did you ever receive a response to your September 15, 1973, letter addressed to Mr. Kissinger?

Mr. MANNING. No, sir.

Mr. LEVINSON. No response at all?

Mr. MANNING. None whatsoever.

Mr. LEVINSON. Thank you, I have no more questions, Mr. Chairman.

an / Mr. CAREY. I think we have to face the fact for the next 5 years, and I am not saying this as part of this discussion, I am just sounding off because I consider myself an oil man second and an American first, and I think we have got to free ourselves from foreign sources of energy to the greatest extent possible and as soon as we can, and I think we can do it. I think we have oil off the New England coast and I think that an oil well looks the same whether it is off Massachusetts or whether it is in Oklahoma, and the fellow in Massachusetts can't say, "I don't like oil wells, you have got to put them in Oklahoma or Texas," because if he wants energy for himself, he is going to have to have those oil wells off Massachusetts.



## 21 RUFFS—PATS

Fortunately, the good Lord put the oil on the Continental Shelf, maybe 40 or 50 miles off Massachusetts, so he won't see them anyway but it is out there and we are going to have to drill them.

We have oil in the Elk Hills Naval Reservation, and we are going to have to, at some point, face the fact that it is better to take that oil and use it right away because it is right there, and maybe use some of the Alaskan oil as our naval reserves because if we need a naval reserve we can get it out of Alaska the same as we can out of Elk Hills. We can drill very quickly and get relief tomorrow.

We can put Interior Department inspectors on every well we have out in Santa Barbara Channel, and it was carelessness that caused the trouble out there, and we can start producing within 24 hours, and there are a billion barrels sitting out there in Santa Barbara, these are things we can do overnight, so there are many things we can do to help ourselves.

Senator CHURCH. I agree with you.

Mr. CAREY. We can build the pipeline in Alaska inside of a year, not 5 years, because, as somebody once said, how long does it take to build a pipeline? One day if you put enough people because you can put a crew every mile if you want to. This is what we are going to have to face up to, this thing like the Manhattan project, because we have to get it done. And once we get it done and America can stand on its own feet like America should be able to do, we don't have to rely on the foreigners. We are energy sufficient and there is no reason why it should not be.

On coal there is no reason why we can't go back to the methods developed by Germany back during the war, where the pyrolysis of coal, where you can convert coal the cost would be \$7 a barrel to convert coal into a usable form which can be either oil or hydrogenation even to gas. There is nothing difficult about it, particularly when we are paying \$13 and \$14 a barrel for Nigerian crude to lay down on the east coast. We are just kidding ourselves, but we have got to be able to do it now. This is no longer any if, ands, and but, that day is here.

Mr. LEVINSON. Why aren't we doing it in your opinion?

Mr. CAREY. I think that the problem is whereas in the days of Ickes and the days of Mossadegh and the days back in 1957 we had one agency, where the Interior Department ran the show and anything that was going to be done you went to the Interior Department and you got it done, now it is spread too far and wide. I won't know who to go to talk about oil problems. I really would not.

Senator CHURCH. I am not sure I would either.

Mr. CAREY. It is really difficult. That is what I have to put my finger on.

Senator CHURCH. Yes.

Well, your testimony has been very helpful to us.

Mr. CAREY. Thank you very much, Senator.

Mr. LEVINSON. Could I just indulge you for 1 minute. Vivian informed me she has a question which she wanted to ask and Chuck has one or two.

Mrs. LEWIS. I have a very simple question. I was just wondering whether there has been any move by any customers that you supply to turn to other sources of energy such as you mentioned like coal?

Mr. CAREY. Yes, they have, the Public Service in New Jersey and the Edison Co. in New York are converting some of their plants to high sulfur coal. They are doing that as a safety measure.

Mrs. LEWIS. However this does have a pollution effect.

Mr. CAREY. It will have a pollution effect, yes.

Mrs. LEWIS. Therefore it is possibly not the best choice environmentally but—

Mr. CAREY. But given the safety factor I can't blame them. On the other hand if we had a program where we could take the coal and convert the coal to a liquid energy form and then desulfurize it they would not have to make that decision. It is too easily done.

Mrs. LEWIS. Do you have that technology yourself?

Mr. CAREY. We have it, everybody has it. It is common knowledge. It is not anything that is patented, the Germans ran their whole war machine on it all the while they fought us, pyrolysis of coal is a well-known process, there is no secret about it.

## 22 RUFS—PATS

Mr. MEISSNER. Has the State Department taken action relevant to its backing the suits, what is that impact on your present oil supply?

Mr. MANNING. The State Department has taken no action because there are no lawsuits against New England or its subsidiaries pending in any of the U.S. courts.

Mr. MANNING. Are these lawsuits presently embargoing your supplies?

Mr. MANNING. They are not interfering at all.

Mr. CAREY. They are not interfering at all. As a matter of fact, because of the delay in the foreign courts some of these cases may not be heard for several months.

Mr. MEISSNER. Second, in terms that we were talking about the spot market rates on tankers and in terms of a very high period—

Mr. CAREY. Yes.

Mr. MEISSNER [continuing.] Now I understand presently that market is depressed.

Mr. CAREY. It is depressed because of the embargo that is right.

Mr. MEISSNER. Can you take advantage of it or did you have some—

Mr. CAREY. We can and will but that will change again as soon as the embargo goes off and it will skyrocket again but prudently we will.

Mr. MEISSNER. Third, are you processing all of your Libyan crude in Sardinia now?

Mr. CAREY. We are processing as much as we can in Sardinia to eliminate the political situation. What we don't process in Sardinia we process in the Bahamas.

Mr. MEISSNER. What effect does that have on the efficiency of your Bahama plant?

Mr. CAREY. The rest of the plant we are filling up with Nigerian crude.

Mr. MEISSNER. Finally, I wonder if you have any knowledge of what has happened to SoCal's contract to supply Aramco crude to ENI. Do you know in the present—

Mr. MANNING. That was a short term deal. It was over a year's stuff.

Mr. CAREY. That expired.

Senator CHURCH. OK.

Is that all, gentlemen?

[Whereupon, the hearing adjourned at 4:55 p.m.]





Exhibit 2 to Sokolow Affidavit—Manning Deposition  
[pp 1, 46, 49-55]

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

-----X  
:  
LONG ISLAND LIGHTING COMPANY,

Plaintiff,

-against-

74-2253

STANDARD OIL COMPANY OF CALIFORNIA,  
TEXACO, INC., MOBIL OIL CORPORATION, :  
CHEVRON OIL TRADING COMPANY, TEXACO :  
OVERSEAS PETROLEUM COMPANY and :  
JOHN DOES 1 through 10, :

Defendants.  
-----X

Deposition of a witness, RICHARD  
DEY MANNING, taken by plaintiff at the  
offices of Rosenman, Colin, Kaye, Petschek,  
Freund & Emil, Esqs., 575 Madison Avenue,  
New York, N. Y. 10022, on August 20, 1974 at  
10:15 a.m., before Michele Fischer, a  
Certified Shorthand Reporter and Notary Public  
of the State of New York.



1  
2 were conversations. We saw these people frequently in the  
3 Bahamas and out in California, and we had on-going negotia-  
4 tions about the refinery expansion and so forth and so on.

5 And these would be conversations that would be  
6 held just in the normal course of business. You would ask  
7 what is going on, sort of, and this is what we found out.

8 But there was a letter by which we were notified  
9 that there would be some, I think they said originally  
10 sixteen cents, or they told us sixteen cents, and wrote us  
11 a letter and said there would be some amount, and so on.

12 There was some correspondence on it, and there  
13 were a number of conversations on it.

14 Q As of May or June 1973, what had SOCAL told you  
15 about the status of the negotiations with Libya?

16 A Only that these talks were going on. As you get  
17 into the summer, was when I personally made several inquiries  
18 of Mr. Navis; and in effect say, what is happening. And  
19 the answer was, we don't know.

20 And the articles in the press quoting major oil  
21 company sources became, so far as I was concerned, more and  
22 more ominous that those talks were not going as we would  
23 like to see them go; that the Libyans and the producers  
24 did not appear to be getting together.

25 Q Had you learned from Mr. Navis that the talks

1  
2 these settlements, either roughly or specifically?

3 A Roughly, my recollection is it was fifty-one per  
4 cent for the Libyan government and forty-nine per cent for  
5 the producers. I don't know what the buy-back terms were.

6 Q When you learned that the talks were not going  
7 well, did you take any action?

8 A I did.

9 Q What did you do?

10 A I discussed this with Mr. Carey.

11 MR. GREENSPOON: I will--

12 Q I am interested just in things that--

13 A I am not going to say what I said to Mr. Carey.

14 I discussed it with Mr. Carey, and subsequently  
15 I talked to Mr. Navis about the possibility of New England  
16 purchasing it first, the SOCAL interest in the AMNASEAS  
17 group.

18 And then either in that conversation or a subse-  
19 quent conversation, I said either we would purchase the  
20 whole AMNASEAS interest in Libya, the SOCAL portion--I  
21 suggested that we would protect them on their supply of  
22 crude, to the effect that whatever percentage of crude came  
23 out of Libya, everybody would stand in the same relative  
24 posture that he did before we effected that.

25 That if something was going to happen in Libya,



1  
2 that we would be responsible for the entire output of the  
3 AMNASEAS group, or we would share it on whatever basis  
4 could be worked out equitably.

5 Because we had been led to believe, and I had  
6 been led to believe in my initial conversations with Mr.  
7 Navis that the AMNASEAS group was worried that whatever  
8 they did in Libya would foreshadow a new round of negotia-  
9 tions in Saudi Arabia, and could result in the twenty-five  
10 per cent participation that had been agreed to, being up-  
11 set, and a new and larger participation being demanded by  
12 the Saudis.

13 In effect, the domino effect. It was twenty-five  
14 per cent in Saudi Arabia, and some higher percentage in  
15 Nigeria; then if they broke in Libya and gave fifty-one  
16 per cent, that the inevitable consequence would be that  
17 Saudi Arabia would demand the same thing.

18 Now, I got this in conversations with Mr. Navis.  
19 And I also, because I asked him the question because I had  
20 read this in the newspapers. This was the reason that the  
21 talks were not progressing well.

22 And I told him that I saw this as a tremendous  
23 threat to New England's position in the marketplace; and  
24 that we felt that while it was a small pond, in effect, to  
25 SOCAL and to Texaco, it was our biggest pond, and the small

Manning

51

1  
2 being Libya, Libya was a small pond to them compared to their  
3 interest in Saudi Arabia, but to us it was the biggest pond  
4 we had and the most important pond we had.

5 Now the situation had changed in the intervening  
6 period from one of oversupply of crude oil to one of a very  
7 tight supply of crude oil. And we no longer could feel, as  
8 we could have in 1968 or 1969, that you could go out in the  
9 marketplace and replace this oil.

10 This oil was lost to us, as far as we knew. There  
11 was no place we could get replacement oil, not even with  
12 respect to sulphur content; forgetting the fact that our  
13 market was a low sulphur market, and this was one of the  
14 few low sulphur crudes around, forgetting the sulphur con-  
15 tent, we didn't even know where we would get replacement  
16 oil.

17 Q What was Mr. Navis' reaction to your proposal  
18 regarding NEPCO's obtaining an interest in the AMNASEAS,  
19 directly?

20 A One question--I would say negative, his response  
21 was negative.

22 One of the questions he raised was "how are you  
23 going to pay for it?" And I said "Well, I suppose the same  
24 way the Libyans are going to pay you, if they pay you at  
25 all. We will pay you from the proceeds of whatever crude



1  
2 oil we get out of there. We can work out some sort of an  
3 arrangement."

4 And to this day, I think this sort of arrangement  
5 could have been worked out.

6 Q Do you know whether Mr. Carey had conversations  
7 with Mr. Navis on the same subject?

8 A I believe Mr. Carey had one conversation with Mr.  
9 Navis.

10 Mr. Carey at that time was recovering from a  
11 heart operation, and was not as active in the business as  
12 he normally would have been. And those of us who had been  
13 involved in these things were acting more or less to try  
14 to protect the interest of the company while Mr. Carey was  
15 out.

16 Q Did Mr. Navis reject outright your proposal with  
17 respect to NEPCO's obtaining an interest in AMNASEAS?

18 A Well, to say reject outright, I don't think maybe  
19 is quite accurate, but it was almost that.

20 It was not received with any enthusiasm whatsoever.  
21 And I really don't think it ever, from my discussions with  
22 him, I didn't gather that it was ever taken up seriously  
23 with any of the top management, where it would have to be  
24 dealt with.

25 Q Did he state a reason, apart from any possible

1  
2 payment difficulty, for rejection?

3 A Yes. He said he didn't think it would work. He  
4 thought the Saudi Arabians would consider it a subterfuge,  
5 and would say we were just acting for SOCAL, and that the  
6 same result would obtain in Saudi Arabia.

7 Q Did there come a time when you approached Carlyle  
8 Lane on this same subject?

9 A After I realized I was getting nowhere with Mr.  
10 Navis, I did call Mr. Lane.

11 Q Who was Mr. Lane?

12 A Mr. Lane is a partner in the firm of Hill, Burr,  
13 Madson & Suito, who are outside counsel to SOCAL. And Mr.  
14 Lane is the partner that I had worked with throughout the  
15 negotiations on the Bahamas refinery.

16 Q What was the nature of your proposal to Mr. Lane?

17 A The same proposal.

18 Q What did he say?

19 A Well, he said he would endeavor to take it up with  
20 SOCAL management.

21 And we discussed the fact that I put the proposi-  
22 tion to him, that things looked like, to me, things were  
23 getting pretty tight as far as time was concerned; and  
24 that if we were going to do anything we would have to do it  
25 pretty quickly. And I believe, as I said before in the



Manning

54

1  
2 Church subcommittee, that if two lawyers like he and I got  
3 in a room together, we would knock out an agreement that  
4 would accomplish this in one day.

5 And I still believe we could have done that; more  
6 because of Mr. Lane's ability than mine, but I believe we  
7 could have done it.

8 Q Did there come a time when Mr. Lane informed you  
9 that the Government of Libya was set to act with respect to  
10 obtaining an interest in AMNASEAS?

11 A That was on the Friday before the first of Septem-  
12 ber, which fell on the weekend.

13 Q What did Mr. Lane tell you?

14 A He told me that they had received reports that  
15 Qadhafi had some problem with his relationship with the  
16 Egyptians, I think at that time there was this talk going  
17 on of a merger of the two countries; and that they under-  
18 stood the nationalization order was to be effective on  
19 September the 1st.

20 Q Did he tell you what effect that would have on  
21 the supply of crude oil to the refinery or to NEPCO?

22 A No.

23 Q Did you ask him?

24 A I don't believe I had to ask him.

25 Q You knew?

1  
2 A I was under the impression that it would have some  
3 effect.

4 Of course, the critical problem was, what will  
5 SOCAL do about it. In other words, the other suppliers who  
6 had reached an accord with the government continued to get  
7 their oil. They may not have gotten exactly the same quantities,  
8 but I do specifically recall Dr. Hammern's statement  
9 that he was doing better after he made his deal with the  
10 Libyans than he did before.

11 But the real question was not what the Libyans  
12 did, but what SOCAL was going to do as a result of what the  
13 Libyans did.

14 Q Did you have any discussion with Mr. Lane on this  
15 subject, what SOCAL was going to do?

16 A I don't think I did, no.

17 By that time the press was just literally full  
18 of articles that SOCAL and Texaco were not going to give  
19 on this subject. And I believe I gathered the same from  
20 my conversations with Mr. Navis; that they appeared to be  
21 looking in entirely at what the impact was going to be on  
22 Saudi Arabia, and did not, so far as I was able to ascertain,  
23 indicate any concern whatsoever as to what was going to be  
24 if that Libyan oil was denied to them.

25 Q Do you know whether Mr. Carey or anyone else in



Exhibit 3 to Sokolow Affidavit—Carey Deposition  
[pp 1, 4-6, 17, 63]

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

-----X  
LONG ISLAND LIGHTING COMPANY, :  
Plaintiff, :  
-against- : (IBW)  
STANDARD OIL COMPANY OF CALIFORNIA, : 74 Civ 2233  
et al., :  
Defendants. :  
-----X  
CONSOLIDATED EDISON COMPANY OF :  
NEW YORK, INC., :  
Plaintiff, :  
-against- : (IBW)  
STANDARD OIL COMPANY OF CALIFORNIA, : 74 Civ 2645  
et al., :  
Defendants. :  
-----X

Deposition of a witness, EDWARD M. CAREY  
taken by plaintiffs at the offices of Rosenman Colin  
Kaye Petschek Freund & Emil, Esqs., 575 Madison Avenue,  
New York, New York 10022 on October 2, 1974, at 10:00  
a.m., before Edward Grant, a Certified Shorthand  
Reporter and Notary Public of the State of New York.

1  
2 E D W A R D M. C A R E Y, being first duly  
3 sworn by the Notary Public (Edward Grant), and stating  
4 his residence as 435 East 52nd Street, New York, New  
5 York 10022, testified as follows:

6 EXAMINATION BY MR. SOKOLOW:

7 Q Mr. Carey, are you the chief executive officer  
8 of Nepco?

9 A I am.

10 Q Did you and Mr. Richard Manning testify before  
11 a subcommittee of the United States Senate on or about  
12 November, 1973?

13 A If you mean the Church Committee--

14 Q Yes.

15 A The answer is yes.

16 Q Was the testimony that you gave there true, to  
17 the best of your knowledge and belief?

18 MR. SKLARSKY: I object to the form of the  
19 question.

20 A Yes, I believe so.

21 Q Mr. Carey, did there come a time when Nepco or  
22 one of its subsidiaries entered into a supply contract  
23 with SoCal or one of SoCal's subsidiaries?

24 A You mean after the testimony?

25 Q At any time.



Carey

5

1  
2 A Yes.

3 Q Approximately what was the date?

4 A There were several contracts. The first contract  
5 was, I think, either late 1967 or early 1968.

6 Q Was that the first time that Nepco had ever had  
7 a supply arrangement with Standard Oil of California?

8 A No, I don't think so. I think that from time  
9 to time prior to that we had short-term contracts with  
10 their local company at Perth Amboy, New Jersey, the Chevron  
11 Oil Company, but those were short-term contracts.

12 MR. GREENSPOON: Are you asking about  
13 crude oil?

14 MR. SOKOLOW: Yes.

15 A That's the first crude oil contract.

16 Q Can you tell me how it came about that this  
17 contract was negotiated? In other words, did you approach  
18 SoCal or did SoCal approach you?

19 A I believe that SoCal approached us. They had  
20 heard of our plans. It's rather indefinite in my mind as  
21 to who made the first approach, but I think SoCal approached  
22 us back in 1967, having heard of our plans to erect a  
23 refinery in the Bahamas, and suggested that we discuss the  
24 use of their Libyan and Middle East crude oils.

25 Q Before the entry of the agreement that we are

Carey

6

1  
2 talking about, Mr. Carey, to your knowledge, had SoCal  
3 contacted any of your customers?

4 A Yes, they had.

5 Q How do you know about that, sir?

6 A We had calls--we have long-term contracts with  
7 most of our customers, and we had calls from these  
8 customers, that a representative of Standard Oil Company  
9 of California, their local marketing group, known as the  
10 Chevron Eastern, I call it, would call upon them on the  
11 possibility of selling oil for their generating stations.

12 We had calls from the utilities in Massachusetts.  
13 We had calls from utilities in New York and in New Jersey.  
14 So, it was pretty well known to us as to what that plan  
15 was.

16 Q Do you know whether or not SoCal offered any of  
17 these customers guarantees?

18 A I don't know what offers they made to them  
19 except that they wanted to sell fuel oil.

20 Q Was the thought of your long-term arrangement  
21 with SoCal that SoCal ships were to be used to transport  
22 the crude oil?

23 A Ultimately, when we signed the contract, it  
24 provided for SoCal to provide the shipping to deliver the  
25 crude to the refinery.



1  
2 Amoseas, at least -- I am getting this question a little  
3 mixed up.

4 They were supplying Amna crude oil to their  
5 35 per cent owned portion of the refinery. When we saw  
6 that, we said, "You can no longer say you don't have  
7 Amna oil; where is our share?" So they gave us 800,000  
8 barrels, which were 2 partial shipments on ships that were  
9 going to their Bahamian affiliate.

10 Q Mr. Carey, you mentioned that SoCal stopped  
11 supplying oil, crude oil, and took away the ships.

12 Are you familiar with litigations commenced by  
13 the oil companies against your company or its subsidiaries?

14 A Yes, sir.

15 Q Tell us what you know about that.

16 A I know that the oil companies, that is, Texaco,  
17 SoCal, Mobile, have commenced actions against us in  
18 Sardinia, where we put some of the Libyan oil, and in  
19 the Bahamas. There are about 25 of those actions out-  
20 standing at the present time.

21 Q Brought by those 3 companies?

22 A That is correct.

23 Q Why was the crude oil shipped to Italy, Sar-  
24 dinia?

25 A We, at that time, thought, after these warnings

1  
2 MR. SOKOLOW: Does anybody else have  
3 any cross examination?

4 MR. SUGARMAN: Topco has no questions of  
5 this witness at this time, but as we have with pre-  
6 vious Nepco witnesses reserve our rights to ask  
7 questions.

8 MR. SOKOLOW: Is that true of the other  
9 defendants?

10 MR. SCHUBIN: No questions.

11 MR. NEWMAN: We have no further questions.

12 BY SOKOLOW:

13 Q Mr. Carey, towards the end of your cross exami-  
14 nation you listed a series of companies doing business  
15 in Libya whom you contacted with respect to getting  
16 crude oil.

17 Did you also talk to Texaco?

18 A Yes, we talked to them all. I mentioned these  
19 companies specifically because they were the independents  
20 and we thought perhaps if there was any opportunity of  
21 there being any spot oil it would more likely be with the  
22 independents than with the majors.

23 Q But you did talk to Texaco and Mobil?

24 A Yes, and Esso, Exxon.

25 Q Earlier in your cross examination, you identi-





Exhibit 34 to Sokolow Affidavit—Weinand Deposition  
[pp 1, 22-26]

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

-----X  
:  
LONG ISLAND LIGHTING COMPANY, :  
:  
Plaintiff, :  
:  
--against- 74-2253 :  
:  
STANDARD OIL COMPANY OF CALIFORNIA, :  
TEXACO, INC., MOBIL OIL CORPORATION, :  
CHEVRON OIL TRADING COMPANY, TEXACO :  
OVERSEAS PETROLEUM COMPANY and :  
JOHN DOES 1 through 10, :  
:  
Defendants. :  
-----X

Deposition of a witness, RICHARD G.  
WEINAND, taken by plaintiff pursuant to notice  
dated June 7, 1974 at the offices of Rosenman,  
Colin, Kaye, Petschek, Freund & Emil, Esqs.,  
575 Madison Avenue, New York, N. Y. 10022, on  
June 27, 1974 at 10:15 a.m., before Michele  
Fischer, a Certified Shorthand Reporter and  
Notary Public of the State of New York.



Weinand

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Q On or about September 13, 1973, did you receive  
a telephone call from Mr. L. W. Folmar?

3

4

A I did.

5

6

Q Will you tell us, as best you can, what Mr.  
Folmar said to you and what you said to him in this conver-  
sation?

7

8

A To be explicit, I will refer to the memorandum  
I wrote immediately after receipt of that phone call.

9

10

MR. SOKOLOW: May I have that memorandum

11

to which you are referring marked as LILCO's Exhibit 2?

12

Let's have the reporter mark it before you

13

go ahead.

14

(Memorandum written by Mr.  
Weinand re: telephone call  
from Mr. L. W. Folmar on  
September 13, 1973 marked  
Plaintiff's Exhibit 2 for  
identification as of this  
date.)

15

16

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Q Can you now tell us what this telephone conver-  
sation was?

19

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A Yes. And to be explicit, I will read my memoran-  
dum, if I may.

21

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MR. GREENSPOON: I think they want you  
to testify from a refreshed recollection rather than  
reading the memorandum. I expect that is so; I don't  
know.

Exhibit 34 to Sokolow Affidavit—Weinand Deposition  
[pp 1, 22-26]

Weinand

23

MR. SOKOLOW: Yes, that is correct. You may refer to the document which is LILCO's Exhibit 2, but I would like to have your recollection aided by that memorandum as to what happened in the conversation.

THE WITNESS: All right.

A At 2:20 p.m. on September 13th I received a phone call from a gentleman who identified himself as Mr. Laurie W. Folmar, who said he was senior vice president of Texas, Incorporated, and also a director of the company.

I have never met Mr. Folmar, nor had I, prior to this conversation, ever spoken to him.

He proceeded to advise me that, of his awareness that NEPCO was loading a ship at Rasla Nuf, Libya--I think it's two words.

At that particular point he interrupted to state that he wanted to know whether or not I was taping the conversation, or was there anyone else on the line, and I advised him to the contrary.

He said they were the owners of oil concessions in Libya which were held jointly with our partners in the Bahamas refinery, which is so called.

He further advised that in their judgment, the Libyan Government had no right to sell this oil, and that



Weinand

24

1 the Libyan Government had never delivered to the Texas  
2 Company a signed decree.  
3

4 The Texas Company had also been in touch with  
5 the State Department of the United States Government, who  
6 also agreed that the loading of the ship was illegal.

7 I inquired of Mr. Folmar whether or not he was  
8 also represented, his partnership, his partnership in the  
9 concession SOCAL. He responded by saying he was only  
10 representing the Texas Company.

11 He went on to say that they had made an official  
12 protest to the Libyan Government, which--with respect to  
13 the loading of the ship. And that he was also informed that  
14 the Standard Oil Company of California had been in communi-  
15 cation with NEPCO with respect to this incident.

16 I reported to Mr. Folmar that I had no knowledge  
17 of that at that time.

18 The conversation was concluded with Mr. Folmar  
19 stating that this incident was an international matter and  
20 had potentially grave consequences; and also involved  
21 strong military overtones and national security.

22 The conversation was closed with my comment that  
23 I would take everything that he had stated to me into con-  
24 sideration. That concluded the telephone conversation.

25 Q Was it correct that what Mr. Folmar wanted NEPCO

Weinand

25

to do was to not lift and load that Libyan oil?

MR. LITVACK: I object to the form.

A Yes.

Q Was that the first communication, as far as you were aware, that NEPCO had from Standard Oil, from Texaco, Inc. on this subject?

A To the best of my knowledge, yes.

Q When did you prepare the memorandum which has been marked LILCO's Exhibit 2?

A Within the hour.

Q To whom did you report this telephone conversation?

A To Mr. Carey and to other members of our staff, through the issuance of a memorandum.

Q Did you discuss with Mr. Carey what would have been the consequences to NEPCO and its customers if NEPCO followed the advice of Mr. Folmar?

A I did not.

Q Did you have an opinion as to what would be the effect on those customers?

A I did.

Q What was that opinion?

MR. LITVACK: I object.

MR. GREENSPOON: Are you asking for his



Weinand

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opinion at that time?

MR. SOKOLOW: Yes, at that time.

A My opinion at that time, that the consequences, conforming to the wishes of Mr. Folmar, would be disastrous with respect to the capabilities of the utilities on the east coast to continue to provide electric energy.

Q And why would it have been disastrous, in your opinion, Mr. Weinand?

A Because it would curtail the availability in substantial quantities from which we derived the residual fuel oil which is ultimately delivered to the utility for the generation of electricity.

Q You stated that you did not know Mr. Folmar. Did he explain to you why he was calling you, as contrasted with someone else?

A He did not.

Q Now, on this same date, namely September 13, 1973, to your knowledge, did anyone else at NEF O receive a communication from any officer of any oil company with respect to this matter?

A Yes, sir.

Q What happened in that regard; as far as you know?

A Mr. DeBaun received a phone call from SOCAL.

Q At what time, in relation to this telephone

Exhibit 35 to Sokolow Affidavit—DeBaun Deposition  
[pp 1, 14-17]

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

-----X  
LONG ISLAND LIGHTING COMPANY, :  
Plaintiff, :  
-against- : 74-2253  
STANDARD OIL COMPANY OF CALIFORNIA, :  
TEXACO, INC., MOBIL OIL CORPORATION, :  
CHEVRON OIL TRADING COMPANY, TEXACO :  
OVERSEAS PETROLEUM COMPANY and :  
JOHN DOES 1 through 10, :  
Defendants. :

-----X  
Deposition of a witness, DENTON  
L. DeBAUN, taken by plaintiff pursuant to  
notice dated June 7, 1974, at the offices  
of Rosenman, Colin, Kaye, Petschek, Freund  
& Emil, Esqs., 575 Madison Avenue, New York,  
N. Y. 10022, on July 3, 1974 at 10:10 a.m.,  
before Michele Fischer, a Certified Shorthand  
Reporter and Notary Public of the State of  
New York.



DeBaun

14

Q Will you tell us what it was that happened on  
September 13, 1973 that brought that fact to your attention?

A I had a telephone call--

MR. SKLARSKY: Just a minute. I will  
object to the form of that question. The use of the  
word "fact" in there, I will have a continuing objec-  
tion.

MR. SOKOLOW: Will you answer?

THE WITNESS: Will you repeat the ques-  
tion?

(Whereupon, the reporter read back the pre-  
vious question.)

MR. GREENSPOON: That fact being that  
Chevron was no longer delivering oil? That fact, does  
that mean that Chevron would no longer deliver oil?

MR. SOKOLOW: Correct.

MR. GREENSPOON: Now do you understand  
the question?

THE WITNESS: Right.

Q What happened on September 13th?

A At about 2:35 that afternoon I had a phone call  
from Mr. H. A. Navis, who was vice president of SOCAL.

Q Did you know Mr. Navis prior to this time?

A Yes.

DeBaun

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Q And in what connection had you gotten to know him?

3

A I got to know him six or seven years ago when  
SOCAL and New England were working on the BORCO project.

4

5

Q By the "BORCO project," you are referring to the  
refinery?

6

7

A Right.

8

Q Did Mr. Navis tell you from where he was calling?

9

A No.

10

Q Did he tell you who was with him?

11

A No.

12

Q Well, can you tell us, as best you can recall,  
what he said to you and what you said to him in this tele-  
phone conversation?

14

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A Well, he asked if Mr. Carey had come back from  
Europe yet, and I told him that we were expecting him, Mr.  
Carey, either that evening or the next morning. I assumed  
he was trying to reach Mr. Carey.

16

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He said that he had been advised that PETCO had  
nominated a ship to pick up a cargo of Libyan oil, crude  
oil, that is; and that SOCAL was taking a position that  
the oil was not owned by the Libyan Government.

20

21

22

Q What else did he say?

23

24

A That they had lodged a protest with the Libyan  
Government, and that he was distressed that we were buying

25



DeBaun

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1  
2 what he called "hot oil" which he and his company considered  
3 to be owned jointly by Texaco--

4 Q And his company?

5 A Yes.

6 Q What else did he say?

7 A He said they intended to take whatever legal  
8 action was required to protect their position, and that  
9 they were very distressed, and that this move on PETCO's  
10 part would not do any good to the relationship between  
11 SOCAL and NEPCO.

12 He said he was writing a letter to PETCO that  
13 day, outlining the above points, and would telex a copy of  
14 that letter to Mr. Carey.

15 He said he recognized that in Mr. Carey's absence,  
16 I was acting as a messenger.

That was about the context of the conversation.  
18 I had very little to say; I just listened.

19 Q Did he tell you that he was going to the Bahamas?

20 A Yes.

21 Q Did he tell you when he was going to get there?

22 A He was going to get there on a Sunday night  
23 following the date of our conversation.

24 MR. SOKOLOW: I ask that this memorandum  
25 from Mr. D. L. DeBaun to Mr. E. M. Carey dated

DeBaun

17

September 13, 1973 be marked LILCO's Exhibit 4 for identification.

(Memorandum from Mr. D. L. DeBaun to Mr. E. M. Carey dated September 13, 1973 marked LILCO's Exhibit 4 for identification as of this date.)

Q Did you prepare LILCO's Exhibit 4 for identification?

A Yes.

Q When did you dictate that memorandum?

A On the date shown on the memorandum.

Q How soon after the telephone conversation did you dictate it?

A I think within the next hour.

Q And does that memorandum which is LILCO's Exhibit 4 accurately describe, as best you can tell us, the conversation that you had with Mr. Navis on that date?

A Yes.

Q Now I ask you to look at paragraph 6 where Mr. Navis says that your action was "not doing any good to the relationship between SOCAL and us."

What was the relationship to which Mr. Navis was referring?

A The partnership ownership of BORCO, I assume.

Q Do you recall in the course of the conversation





Exhibit 62 to Soklow Affidavit—Letter from Manning to Folmar

(9)

MANNING, CAREY, REDMOND & TULLY.

ATTORNEYS AT LAW  
122 EAST 42ND STREET  
NEW YORK, NEW YORK 10017

212-867-1040  
CABLE "RICHOEYMAN"

*Files 10-1  
8/20/74-10*

RICHARD DEY MANNING  
HUGH L. CAREY  
D. J. CAREY, JR.  
JOHN T. REDMOND  
JAMES H. TULLY, JR.  
ANDREW M. CALAMARI  
MICHAEL J. WHELAN

LOREN T. WOOD  
COUNSEL

SAN JUAN, PUERTO RICO  
PIERAS & TORRUELLA  
BANCO POPULAR CENTER  
809-765-9932

September 15, 1973

Texaco Overseas Petroleum Company  
135 East 42nd Street  
New York, New York 10017

Attention: L. W. Folmar, Esq.  
Chairman of the Board

Gentlemen:

In response to the letter dated September 13, 1973 (received by hand on September 14), from L. W. Folmar, Chairman of the Board of your Company, to New England Petroleum Corporation ("NEP") our client, and your earlier telephone call to Mr. Weinand, Vice President of NEP, which conversation has been reported to us, this will advise you as follows:

1. Your Company asserts that the NOC decree under which NOC claims title to the oil sold to NEP's subsidiary, Grand Bahamas Petroleum Company, Limited ("Petco") "is in violation of TOPCO's contractual rights and established principles of International Law". Since NEP and Petco are not parties to the contractual agreements between your Company, its subsidiaries or affiliates, and the Libyan Government, they nor we have any way of knowing whether or not your assertion is correct. We can state with assurance, however, that such matters are usually determined by courts of competent jurisdiction on the basis of the facts and law and not on the basis of unilateral pronouncements by interested parties.
2. We know nothing about, nor are we concerned with, NOC's instructions to Mobil Oil Libya or what advice your Company may have given to the Libyan Government about your intentions. NEP and Petco are not involved in the dispute your Company has with the Libyan Government nor do they intend to become "pawns" in such dispute or victims of it. The crude oil Petco lifted in the



Texaco Overseas Petroleum Company

Page Two

"NEPCO COURAGEOUS" is the identical crude Petco has been purchasing under long term contract with Chevron Oil Trading Company ("Chevron") since 1970. Chevron has discontinued deliveries to Petco (apparently as a result of the same dispute your Company has with the Libyan Government) in spite of Petco's undertaking to pay any increases in "Government take" suffered by Chevron, including increases due to Government "participation", Petco is obliged to seek replacement of that crude oil from whatever source may be available. In this case, the only similar crude oil available was offered by NOC.

3. In connection with your assertion that your Company will "pursue every legal remedy available to recover such crude oil and protect its legal rights in this respect" we wish to repeat that neither NEP nor Petco is a party to your dispute with the Libyan Government, nor do they wish to be. They do not wish to do anything which will be in derogation of any rights your Company may have against the Libyan Government or any one else, for that matter. However, we wish to let you know that the Anna crude oil previously supplied by Chevron to Petco was, with Chevron's full knowledge, used primarily to supply low sulfur fuel oil to Con Edison of New York, Orange and Rockland Utilities, Long Island Lighting Company and Public Service Electric and Gas of New Jersey and other East Coast utilities. Unless the replacement oil secured by Petco from NOC is allowed to move unimpeded into Petco's refinery's and the products therefrom to move to such customer's tanks, there is no question that severe power "blackouts" will occur on the U.S. East Coast, involving some 20,000,000 people or more (in this regard I refer you to an article which appeared in the press as a result of our informing Con Edison of New York of the action taken by Chevron in suspending deliveries to Petco). I would suggest that the interest of the public -- which Petco and NEP are endeavoring to protect -- be considered in any action your Company proposes to take, perhaps ahead of the financial interests of your Company.

Very truly yours,

Richard deY. Manning

RdeYM/mg

## Con Ed Exec Paints

### A Dim Picture in C.

*Daily News*

By JEFFREY ANTEVIL 9/14/73

Washington, Sept. 13. (News Bureau)—Consolidated Edison Board Chairman Charles F. Luce warned today of power blackouts in the New York City area this winter, or a \$20 million jump in electric bills, unless a mandatory fuel allocation program is put into effect.

Luce's "Dear Scoop" letter to Sen. Henry M. Jackson (D-Wash.), chairman of the Senate Interior Committee, was released here by the senator. Jackson predicted "serious power shortages and blackouts" in a number of major metropolitan areas, including New York unless action is taken to assure utilities of adequate fuel for electric power plants.

If President Nixon does not order mandatory fuel allocation in the next few days, Jackson said he expects the House next week to approve legislation, already passed by the Senate, to put the controls into effect.

#### On the Other Side

Nixon's energy adviser, John A. Love, told a Senate Government Operations subcommittee today that mandatory allocation of heating oil will not be needed this winter unless the weather is unusually severe. Love said that "with normal weather, a reasonable level of refinery output and imports somewhat above last

year's level, we will have no major problems."

But Sen. Abraham A. Ribicoff (D-Conn.), the subcommittee chairman, called the administration's present voluntary fuel allocation program "unequal to the task." Ribicoff said, "The problem is not an absolute shortage of heating oil, but the failure by major oil companies to adequately supply independent dealers."

Luce, in his letter to Jackson, said that Con Ed's principal fuel supplier, which provides 45% of the utility's residual oil requirements, had indicated it may not be able to meet its contract commitments this year.

"This could mean blackout in the New York City area," Luce said, unless Con Ed purchases fuel in world markets at "exorbitant prices" and passes the added costs on to customers. Buying foreign fuel, he added, would add more than \$20 million to New Yorkers' electric bills.

Luce said the answer to the problem was mandatory allocation of fuel. He said he intended Love of this in a letter Aug. 1.





1 UNITED STATES DISTRICT COURT

2 SOUTHERN DISTRICT OF NEW YORK

3 - - - - - x

4 Long Island Lighting Co., :  
Plaintiff

5 v. :

6 Standard Oil Company of California, :  
et al., :

Defendants. :

7 - - - - - x

8 Consolidated Edison Company of New :  
York, :

9 Plaintiff :

10 v. :

Standard Oil Company of California, :

11 Defendant. :

12 - - - - - x

13 February 24, 1975,  
14 2:30 P.M.

15 Before:

16 Hon. Inzer B. Wyatt,  
District Judge.

17 Appearances:

18 Rosenman Colin Kaye Petschek Freund & Emil, Esq.,  
Attorneys for Plaintiffs,

19 By: Asa D. Sokolow, Esq.

20 Lord Day & Lord, Esqs.,  
Attorneys for Standard Oil and Chevron,

21 By: Gordon Spivack, Esq.

22 Kaye Scholer Fierman Hays & Handler, Esqs.,  
Attorneys for defendant Texaco,

23 By: Milton Handler, Esq.



Appearances:

DeBevoise Plimpton Lyons & Gates, Esqs.,  
Attorneys for defendant Texaco Overseas,  
By: Irwin J. Sugarman, Esq.

Donovan Leisure Newton & Irvine, Esqs.,  
Attorneys for defendant Mobil,  
By: Sanford M. Litvack, Esq.

1 rkh

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2 THE COURT: Apparently we have all found our  
3 way here. There is a good company assembled after all the  
4 mixup about the rooms. It is a long story as to why we  
5 have been changing around the rooms but there is no point  
6 in going into it. You are all assembled here now and we  
7 have our reporter. I didn't know whether the parties wanted  
8 a stenographic transcript but I thought I would need one  
9 if nobody else did.

10 Now, there are three motions before the court  
11 and I will give my understanding of them, but not in the  
12 order in which the notices were served.

13 There is a motion from all defendants. I think  
14 the plaintiffs have called that the joint motion which  
15 seems a good idea and that is a joint motion, as I understand  
16 it, to dismiss for failure to state a claim upon which relief  
17 can be granted. No affidavits were served by the movants.  
18 I take it, according to the theory of the joint motion,  
19 it is on the face of the complaint.

20 Then there is a motion by SOCAL and Chevron,  
21 and I will just adopt the parties' terminology for the  
22 identity of the *dramatis personae*, and no affidavit was  
23 served with that motion.

24 Then there is a motion of Mobil and an affidavit  
25 was served with that motion.



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2 So, the plaintiffs understandably opposed  
3 all three motions with one set of papers, meaning memorandum  
4 of law and extensive affidavits or an extensive affidavit.  
5 I have forgotten whether there was more than one, and I  
6 gather the plaintiffs would turn these motions into motions  
7 for summary judgment.

8 I, of course, had forgotten all about these  
9 actions but over the weekend I refreshed my recollection  
10 and I can see that these three motions are certain properly  
11 brought and made returnable at the same time because on  
12 the one earlier occasion when we met, I think I indicated  
13 that I didn't want to hear motions in tandem, I wanted  
14 to hear them all together in at least a sequence which has  
15 been cleared with the magistrate in advance; so these  
16 motions are certainly properly brought on here by counsel  
17 together today.

18 Having studied the papers, to the extent it  
19 was possible this last weekend, I propose to follow a  
20 different procedure. I propose to hear the motion by  
21 all defendants, the joint motion today and to adjourn  
22 the other two motions without date. The reason for this,  
23 as I presently see it, and I will give counsel a chance  
24 to this in a moment. The reason for this is, if the  
25 movants in the joint motion are right and at least there

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2 is a chance that they are, then it would not be necessary  
3 to consider the other two motions and the problems that  
4 they raise, to some extent separate problems. And, if  
5 it should turn out that the plaintiffs are right, and  
6 certainly it may be so, then we can take up the other  
7 two motions at a later date and at that later date, certainly,  
8 I ought to be better educated in these problems.

9 Further, I would propose in hearing the joint  
10 motion to look only to the complaint. That is the way  
11 the motion is brought. The movants argue from the face  
12 of the complaint on the motion as made by the defendants.  
13 No affidavits are needed and certainly under the rule,  
14 they can be excluded. I therefore propose to exclude them  
15 and to consider the face of the complaint. Before I adopt  
16 this procedure, I want to give counsel a chance to be  
17 heard on the subject.

18 Are there any objections or comments?

19 MR. SPIVACK: Your Honor, my name is Gordon  
20 Spivack. I am a member of Lord Day & Lord, your Honor.  
21 We represent SOCAL and Chevron. We have no objection to  
22 your Honor's proposal.

23 MR. LITVACK: Your Honor, Sanford Litvack of  
24 Donovan Leisure Newton & Irvine for Mobil. We have no  
25 objection to the manner your Honor has suggested handling.



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2 MR. HANDLER: Your Honor, I am Milton Handler.  
3 I am appearing for all of the defendants on this motion.

4 THE COURT: Are you going to argue the motion?

5 MR. HANDLER: I will be arguing the motion and  
6 we of course appear for Texaco.

7 THE COURT: Do you have any objection?

8 MR. HANDLER: No objection.

9 MR. SOKOLOW: If your Honor please, my name is  
10 Asa Sokolow. I represent the plaintiffs. If your Honor  
11 please, we would have no objection if your Honor would set  
12 this down for a hearing soon because all of our discovery  
13 is at stake in this case at the present time so I would like  
14 to have an early hearing on those other motions.

15 THE COURT: What you mean is, though, you want  
16 me to decide the joint motion soon.

17 MR. SOKOLOW: Yes.

18 THE COURT: Because under my proposal, I am going  
19 to hear the joint motion this afternoon and decide it before  
20 I hear the other two motions. If I should grant the joint  
21 motion, then I wouldn't hear the other two. If I deny it, of  
22 course I would hear it and what you are saying is, if it is  
23 going to be granted or denied, you would like to know about  
24 it promptly.

25 MR. SOKOLOW: Yes, sir. If it is denied, as we hope

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it will be, I hope your Honor would schedule the other two motions for argument shortly.

THE COURT: I think that is a reasonable request, Mr. Sokolow. I agree with you, that if we adjourn it without date when I decide it, I ought to set the other two, if I deny the motion, I ought to set the other two motions promptly and of course I will have to depend on you or somebody else bringing it to my attention because if I file an opinion and turn to something else, I might forget it.

MR. SOKOLOW: I will remind you, your Honor.

THE COURT: You have leave to do so.

That being so, I want to go on for just a further moment on a subject less a matter of substance.

In dealing with the joint motion and in writing any memorandum disposing of it, it seems to me it would be much simpler if we stuck to the first action, the complaint in the first action and just talked about LIILCO because I think it is agreed by everybody that the two complaints are substantially the same and they raise the same problems as far as the joint motion is concerned and, therefore, I propose to look just for simplicity and to save reading, I propose to look at the Long Island Lighting Company complaint and I think further the two claims involved in that complaint, the first and the second, I don't think the second



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2 adds any new problems of law. I think if we just stick  
3 this afternoon to the first claim in the LILCO complaint,  
4 it seems to me to be a lot simpler and because it seems  
5 to me necessary, the decision on the points raised by the  
6 joint motion as to this first claim in the LILCO complaint  
7 will necessarily govern as to the second claim in that  
8 same complaint and as to the first claim in the Con Ed  
9 complaint.

10 Before I adopt that procedure, though, I will  
11 give counsel a chance to make any objections or comments.  
12 What do counsel say about that?

13 MR. HANDLER: No objection, your Honor.

14 THE COURT: Anybody have any objection to that?  
15 We seem to be agreed we are dealing with points of law.  
16 It seems to me easier for me if I can concentrate on the  
17 first thing before I get to the second.

18 Before I hear from counsel, there are two or three  
19 housekeeping problems that I would like to take care of.  
20 When I started looking at these papers I realized I had made  
21 an order I believe on the recommendation of the magistrate  
22 to seal, I believe, Mr. Sokolow's affidavit and his  
23 memorandum of law and possibly some other papers and I have  
24 to tell you ladies and gentlemen that we have so many  
25 administrative and clerical problems in running this court

1 rkh

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2 under the present system that I begin to wonder why I  
3 signed such an order because it just makes it so much more  
4 awkward to deal with the papers. I suppose I am really  
5 asking Mr. Sokolow why do we have to seal these papers? It  
6 is a frightful nuisance.

7 MR. SOKOLOW: I didn't ask they be sealed.

8 THE COURT: Who asked for it?

9 MR. SPIVACK: I did.

10 THE COURT: Why should I do it?

11 MR. SPIVACK: Mr. Sokolow said before all discovery  
12 had been restrained while these motions were being argued  
13 but that is not true with respect to Standard Oil of  
14 California up to this day. That is, we produced literally  
15 thousands of sheets of documents. We took the position  
16 we will give him anything he wants to expedite this matter  
17 so we could get over with it, but on the other hand, those  
18 documents are the day-to-day reports of people engaged in  
19 negotiations with foreign governments who are continuing  
20 to engage in negotiations on the same subjects. They are  
21 very sensitive documents, so we had a stipulation with Mr.  
22 Sokolow that while we would produce them for his inspection,  
23 they were not to be made public or shown to anyone else.  
24 Then suddenly I filed a brief in which he quoted from  
25 these documents and attached literally hundreds of sheets of



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2 documents which are very confidential to his brief and he  
3 filed it with the Clerk's office. The only way we could  
4 deal with that was to rush in and say these have to be  
5 sealed. These are very confidential documents. They  
6 weren't produced for that purpose.

7 As your Honor points out, at this stage we are  
8 talking about a motion. The joint motion is made on the  
9 face of the complaint. That is all you have to look  
10 at to decide this complaint. Those documents that talk  
11 about sensitive negotiations, negotiations with foreign  
12 documents, negotiations with foreign governments that are  
13 continuing today, should not be made public.

14 THE COURT: You mean there is absolutely nothing  
15 I could do to get this albatross off my neck?

16 MR. SPIVACK: At this stage --

17 THE COURT: From my standpoint, this is just an  
18 irritant. In other words, I have to keep these things  
19 separate. I have to keep them under seal. I can only look  
20 at them in the privacy of my chambers. Is there no way  
21 of solving this problem than to subject me to this burden?

22 MR. SPIVACK: Yes, your Honor. The affidavit  
23 and all those exhibits should be withdrawn. They should  
24 never have been filed in the first place.

25 THE COURT: The affidavit isn't producing any

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2 problems but now you say I can't even unseal the memorandum.

3 MR. SPIVACK: Your Honor, let's start with how  
4 we got here. There was an order of this court enjoining  
5 public revelation of those documents. Those documents never  
6 should have been filed in the first place.

7 THE COURT: Look, the order was made routinely  
8 on the recommendation of the magistrate, routinely.  
9 I never heard argument about it.

10 MR. SPIVACK: The order was based on a stipulation  
11 among counsel.

12 THE COURT: But when you refer to the sanctity of  
13 an order of this court, you are referring simply to  
14 a routine order.

15 MR. SPIVACK: I am referring to the sanctity  
16 of a stipulation between counsel.

17 THE COURT: I am telling you the stipulation  
18 between counsel does not and will not bind this court if  
19 there is no reason for it and I am telling you this is  
20 just adding to the intolerable clerical and administrative  
21 burdens of running the machinery.

22 MR. SPIVACK: Your Honor, when that first came  
23 to my attention that there was a violation of a stipulation  
24 among counsel and a violation of an order that had been  
25 entered, I asked Mr. Sokol to withdraw it and rewrite the



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2 brief. The burden should be on the party that violated--

3 THE COURT: The burden isn't on the party, the  
4 burden is on me.

5 MR. SPIVACK: I am suggesting, your Honor, all  
6 your Honor has to do is direct counsel to withdraw the  
7 affidavit and the attachment thereto and redraw his brief.

8 THE COURT: That isn't a practical suggestion.  
9 You are standing there telling me these things  
10 have to be kept secret.

11 MR. SPIVACK: Absolutely.

12 THE COURT: Are the other defendants in the  
13 same boat?

14 MR. SPIVACK: They haven't produced documents.  
15 I think it is an important matter of procedure of courts  
16 if people are going to sign stipulations pursuant to which  
17 confidential documents are going to be produced and in  
18 order to expedite handling of cases, those stipulations  
19 have to be on order.

20 THE COURT: You are insisting I bear the burden.  
21 All right, I will bear it. Sit down.

22 Now I guess the next question is addressed to  
23 whoever wrote the reply brief on the joint motion and I am  
24 looking at page 5.

25 On page 5 of the memorandum, unless I have been

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reading too quickly, I suddenly see a new term "fuel oil."  
Up to that point I have had crude oil, distillate oil,  
residual oil, low grade sulphur oil and now I am thrown  
an expression "fuel oil." Can counsel for the joint motion  
tell me what does that express mean?

MR. HANDLER: That is a synonym for residual oil.

THE COURT: Where is it stated that it is a  
synonym for residual oil?

MR. HANDLER: Probably nowhere, as it is now  
stated by me and I apologize.

THE COURT: I would have said that fuel oil was  
a synonym for distillate oil because distillate oil is oil  
which is used, at least according to the plaintiffs, and  
you may not agree with it, but distillate oil is suitable  
for use as a home heating oil and home heating oil and fuel  
oil to me have always been synonymous.

MR. HANDLER: Your Honor, this case has to do  
primarily with residual oil which is sold for use by  
electric utilities in generating power.

THE COURT: I understand, but I am only asking  
where did this expression "fuel oil" come from.

MR. HANDLER: If you look at paragraph 20 of  
the complaint, your Honor, the last sentence "Residual  
oil is used by utilities as fuel oil in steam turbine



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2 electric generating units." I suppose that is why we used  
3 the term synonymously. Unfortunately your Honor, we are  
4 quite familiar with these matters and therefore we may  
5 have been a little careless in not explaining it more  
6 clearly.

7 THE COURT: In paragraph 19 "Distillate oil is  
8 used for firing relatively small heat load gas turbines,"  
9 and so forth, and I would say fuel oil would be equally  
10 a synonym for distillate oil. However, you told me it is  
11 used as a synonym for what, low grade?

12 MR. HANDLER: It is used as a synonym in my  
13 argument and in the brief for residual oil as defined  
14 in the complaint.

15 THE COURT: Then on that same page, and I am asking  
16 not for argument now but just for clarification. "Plaintiff  
17 do not claim that NEPCO ever purchased fuel oil from any  
18 defendant." I understand that the plaintiff does claim  
19 that NEPCO had a contract with SOCAL. In fact it says  
20 SOCAL was the major supplier, so I don't understand that  
21 2-asterisk footnote on page 5. Can anybody clarify that  
22 for me?

23 MR. HANDLER: I can clarify it and I intend to  
24 discuss this at some length in my argument. I can do it  
25 now or reserve it.

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2 THE COURT: Isn't it true that NEPCO purchased  
3 any fuel oil, that is, residual oil from any of these  
4 defendants?

5 MR. HANDLER: That is correct. They purchased  
6 crude oil which they refine into various petroleum products,  
7 including fuel oil. That is a very critical fact, your Honor,  
8 in this case.

9 THE COURT: The point is that you are saying  
10 that NEPCO never purchased fuel oil. What it purchased  
11 was crude oil.

12 MR. HANDLER: Precisely. I will make much of  
13 that in my argument, your Honor.

14 THE COURT: All right.

15 I think we have gotten the preliminaries out of  
16 the way. I think I will hear the movants on the joint  
17 motion and Mr. Handler, how much time had you thought  
18 that you would like?

19 MR. HANDLER: I will try to confine my remarks  
20 to 30 minutes but I may run over a little bit depending  
21 upon your Honor's questions.

22 THE COURT: All right. I think we promote clarity  
23 and efficiency if I can give you my offhand impressions  
24 having read the briefs on the joint motion. My inclination  
25 is to think with reference to the LILCO complaint in the



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2 expression that Tallulah Bankhead adopted. You know she  
3 was the real daughter of the Alabama father, and while she  
4 had a great many and fascinating characteristics, one of  
5 her more fascinating characteristics was a sharp tongue  
6 and she said with reference to some play that was submitted  
7 to her for a possible vehicle; "There is a good deal less  
8 to this than meets the eye," and frankly, I get the im-  
9 pression from this complaint that there is a lot less to  
10 it than meets the eye, so I think we want to give Mr.  
11 Sokolow a fair chance to persuade me that my initial im-  
12 pression is wrong so you don't have, at the moment as I see  
13 it, the laboring oar.

14 MR. HANDLER: Thank you, your Honor, the message  
15 is very clear.

16 THE COURT: I want to have an explanation but  
17 you can do it fairly shortly because I want to give Mr.  
18 Sokolow a full chance because he is the man who has, as  
19 I see it so far, the uphill fight.

20 MR. HANDLER: Your Honor, I shall fully cooperate.  
21 I must say prefatorily, you are asking something very  
22 different of a law professor, to be brief.

23 Your Honor, let me start off by assuring you  
24 that not only do we have no objection to the procedure  
25 that you have outlined, but we are deeply indebted to the Court

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2 for plunging directly into the jugular issue now before  
3 you. As your Honor knows, and you will forgive me if I do  
4 repeat in creating the setting for my legal discussion,  
5 some of the basic facts.

6 Our motion is grounded on two bases. First,  
7 that the plaintiffs lack the standing to maintain this  
8 claim and second, that they have suffered no legally  
9 cognizable injury.

10 THE COURT: Is it the same point, Mr. Handler?  
11 In other words, I keep wondering whether point 1 and 2  
12 I guess it is of the movants -- is the same point,  
13 that they lack standing because they didn't suffer any  
14 direct injuries?.

15 MR. HANDLER: I think your Honor, it is a matter  
16 of choice whether you fragment it into two parts or one.  
17 Certainly they are interrelated.

18 In determining either of these questions, it is  
19 important not to consider the issues in a vacuum, but  
20 to consider them in relation to the nature of the violation  
21 which is alleged in the complaint, the relationship of  
22 the plaintiffs to the unlawful conduct which is being  
23 complained of, as well as the relationship to the defendants.

24 I was very happy when I heard your Honor indicate  
25 that you were considering this question on the basis of



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2 the LILCO complaint only, so that we don't complicate  
3 the matter by extrinsic facts which are entirely unnecessary  
4 for the determination of the motions.

5 Will your Honor bear with me if in some reform,  
6 I outline the nature of the violations and relate them to  
7 the charges made by LILCO: First, your Honor will recall  
8 that the claim was made that the defendants and other oil  
9 companies formed a committee known as the London Policy  
10 Group to concert their policy with respect to and to  
11 bargain jointly with the OPEC countries, including Libya.  
12 I don't think it is important for me to go into its terms  
13 now. What is important, your Honor, is first to recognize  
14 that even if we were to assume arguendo for the purposes  
15 of the present motion that the agreement on the part of  
16 the London group of oil companies to bargain jointly with  
17 Libya, the Libyan government, is arguably a violation of  
18 the Sherman Act. The critical fact is, the challenged  
19 conduct is directed towards the Libyan government and not  
20 towards the United States or any American company. The  
21 plaintiffs are neither executives, suppliers nor customers  
22 of the putative victim of the defendants' illegal conduct.

23 THE COURT: I should have thought the plaintiff  
24 would want the defendants to succeed.

25 MR. HANDLER: That is correct.

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2 THE COURT: The plaintiffs are local utilities  
3 wanting supplies of oil for this country. I would think  
4 that the plaintiffs would think that this is a fine, patriotic  
5 pro-American objective.

6 MR. HANDLER: Precisely, but relating this part  
7 of the complaint to the law appertaining to standing,  
8 here is an arguable violation of law directed towards  
9 the east and here is somebody west of all of these illegal  
10 acts claiming a remote relationship if ever there was  
11 one to the putative wrongdoing; so if that were all there  
12 was to the case, it is clear that under no decided case  
13 dealing with standing would they have any standing, even  
14 if, contrary to the observation your Honor made, that conduct  
15 had caused injury.

16 Then the complaint goes on and indicates that  
17 they did all of this in order to protect their interests  
18 in Saudi Arabia and that in addition, they ganged up on  
19 Saudi Arabia.

20 THE COURT: Just not Saudi Arabia. The Persian  
21 Gulf area. All of them.

22 MR. HANDLER: Here again, the putative wrong-  
23 doing is directed towards foreign governments and foreign  
24 governments, incidentally, who might have taken umbrage  
25 at the defendants' concerted action, although joint, is not



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2 exactly anathema to these sophisticated practitioners of  
3 cartel techniques. However, your Honor doesn't have Saudi  
4 Arabia or the Persian Gulf countries here as parties  
5 plaintiff. We have LILCO operating a utility in Long  
6 Island.

7 Then the complaints go on to allege that NEPCO,  
8 the supplier of what we call fuel oil or residual oil  
9 to LILCO, had a contract with SOCAL for crude oil and  
10 they implied that SOCAL's conduct was wrongful because it  
11 purportedly was in derogation of its contractual relation-  
12 ship with NEPCO.

13 Then they go on to say that instead of yielding  
14 to the demands of the Libyan government, SOCAL refused  
15 to acquiesce in a 51 per cent takeover, that it refused  
16 to lift any Libyan oil after the takeover so it had none  
17 to sell to NEPCO, that it caused suits to be brought  
18 against NEPCO when NEPCO proceeded to obtain its Libyan  
19 oil requirements from the Libyan National Oil Company  
20 and that it otherwise sought to prevent NEPCO's purchase  
21 from that company of the crude oil which SOCAL claimed  
22 belonged to it.

23 Your Honor, elementary contract law apart from  
24 antitrust teaches that if NEPCO had a contract with SOCAL  
25 and SOCAL broke that engagement, a customer of NEPCO does not

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have a contractual cause of action against the breaching party, and a fortiori when all that is alleged in this part of an antitrust company is a breach of contract, that in and of itself would not constitute an antitrust infraction which could be vindicated by the customer. So, so far fragmenting the complaint we see nothing that touches upon this plaintiff.

Now we cut to the latter part of the complaint where the charges is that SOCAL and the other defendants engaged in a boycott of NEPCO and the lurid details are all outlined in the complaint on how this alleged boycott took place. Again we have a situation which runs squarely counter to the decided cases. The victim of a boycott has a right of action if he can prove the charge. A customer of the boycotted party does not have standing to sue on the basis of the boycott.

Your Honor, I have done something solely in the interest of analysis. I have fragmented the complaint. I am not saying that that is the way a judge passes upon the complaint. What I do say is, that if you break the fagot stick by stick, you have nothing as to which the plaintiff could complain. If you take the bundle as a whole, it adds up precisely to the same thing, that there is nothing here that is the proximate cause of injury to the plaintiff



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2 for which it would have standing.

3 Now, I turn, your Honor, to the law relating  
4 to standing and I proceed on the well founded assumption,  
5 since I have read some of your Honor's writings, that  
6 you are quite familiar, probably more than any person  
7 in this room, with the cases in this district and in the  
8 Court of Appeals dealing with the circumstances under which  
9 one can bring suit for an antitrust infraction.

10 Your Honor, I thought it would be most helpful  
11 to you instead of my reviewing the cases at any length,  
12 if I were to isolate the contentions that are made by the  
13 plaintiffs here in their efforts to restrict themselves  
14 from the embarrassment from cases squarely on point and  
15 which dictate a dismissal of their complaint.

16 First, I think a couple of preliminary facts  
17 have to be stressed. The plaintiff purchased residual  
18 oil from NEPCO. NEPCO prior to the acts alleged in the  
19 complaint was a purchaser of crude oil from SOCAL. What  
20 did it do with this crude oil? Transported by tanker to  
21 the Bahamas where it had a refinery. In the refinery it  
22 made all petroleum products, one of which was the residual  
23 oil which it sold to LILCO.

24 THE COURT: But I think, Mr. Handler, SOCAL  
25 delivered the oil to NEPCO's refinery. I don't think NEPCO

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2 supplied the tankers according to the complaint.

3 MR. HANDLER: It is an immaterial point because  
4 later on the complaint talks about their transporting  
5 the oil themselves to their refinery.

6 THE COURT: Because SOCAL refused to make any  
7 tankers available.

8 MR. HANDLER: But it is not material on the  
9 issue of standing, your Honor.

10 The first argument that the plaintiffs make is that  
11 they can prove that they were hurt as a result of all the  
12 acts alleged in the complaint. For purposes of dealing  
13 with the situation that they are asserting, I say let's  
14 assume that to be the case. It has no legal significance.  
15 Contrary to their argument that under Section 4 of the  
16 Clayton Act one who suffers harm can maintain an action;  
17 the case law in this circuit and in virtually every other  
18 circuit and according to the footnote statement by Justice  
19 Marshall in the Hawaii case; the fact you have suffered  
20 injury is only the first step in the inquiry. The second  
21 step is whether your relationship to the violation as  
22 such endows you with standing to maintain the action for  
23 treble damages.

24 They would have, your Honor, erase -- all of  
25 the cases in this circuit erase the statement of Justice



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2 Marshall, take the statute in its pristine form and reject  
3 what Judge Waterman called a judicial gloss on the statute.  
4 Now, if that is to be done, it will have to be done by  
5 the United States Supreme Court and not in the District  
6 Court and I don't believe that it will be done in the  
7 Supreme Court because they had ample opportunity when all  
8 of these cases of the Second Circuit came before them on  
9 certiorari to have taken up one of the cases to determine  
10 whether that reading which is now proposed, has any merit.  
11 The fact is that they didn't do it.

12 The second point that the plaintiff makes is  
13 that their complaint alleges an intent on the part of the  
14 defendants to cause this precise injury to the plaintiff.

15 THE COURT: I didn't find that. Why do you find  
16 such averment?

17 MR. HANDLER: There is none. That was one of the  
18 grounds for rejecting it but I thought it would be valuable  
19 lest we have a request by them to amend the complaint  
20 to allege intent to consider the legal sufficiency of a  
21 specific intent if properly alleged.

22 Your Honor, in paragraph 22 they say there was  
23 knowledge and then they go on to allege in paragraph 23  
24 that we intended the acts and practices in which we engaged  
25 to further the conspiracy. I don't think that is an

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2 adequate allegation of intent, but it wouldn't make any  
3 difference because I know if they had a well pleaded alle-  
4 gation, and here I want to go beyond the briefs, your  
5 Honor, because I think I may be telling you something  
6 that does have a reasonable degree of involvement warranting  
7 my getting up on my feet and taking as much time as I have.  
8 I have had a great deal to do with this matter of intent  
9 professionally and academically. I have been involved in  
10 a great many of these cases and I have some that are pending  
11 before some of your colleagues. I looked into this question  
12 of intent. One of the earlier cases in this circuit, the  
13 West Moreland-Asbestos Company case which involved a suit  
14 by a stockholder on appeal to the second Court of Appeals,  
15 the plaintiff's case who had been dismissed argued that  
16 the prior cases were not in point for the simple reason that  
17 he alleged intent and the prior cases did not allege intent.  
18 Intent to injure him and the allegations were very specific.

19 Well, the defendant's counsel called attention  
20 to the Court of Appeals that there were allegations of  
21 intent in the earlier cases and they nonetheless had been  
22 decided in favor of the defendants and the Court of Appeals  
23 despite the claim of intent in West Moreland affirmed  
24 the dismissal.

25 We come to the SCM case where I was consulting



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Billy Baxter, a later case. Not only, your Honor, was there specific allegation of intent in the pleadings, but to make assurance doubly sure, the plaintiff sought permission from Judge Ryan to amend the complaint to allege it was the intent and purpose of Coca Cola and Canada Dry that plaintiff be removed as a competitor of Coca Cola and Canada Dry. The Court of Appeals affirmed Judge Ryan and said he was entirely right in granting a motion for summary judgment and denying the request for amendment because motive and intent are immaterial on a standing motion.

I suppose for purposes of twitting me, your Honor, they cited and rely heavily on the case that we tried before Judge Gurfein. That is the International Railways--

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2 MR. HANDLER: Judge Gurfein. We made a motion,  
3 your Honor, to dismiss the complaint on the ground of standing.  
4 The judge--

5 THE COURT: What case was that?

6 MR. HANDLER: International Railways of Central  
7 America against United Brands.

8 THE COURT: I'm sorry I asked the question.

9 MR. HANDLER: Your Honor, there was an allegation  
10 in the complaint that after the state court recovery by  
11 the railroad of a large sum of money, in retaliation the  
12 Bahamian company closed the Tiquisate plantation, so Judge  
13 Gurfein said, in light of that allegation and on the eve  
14 of trial, I am going to give the plaintiff an opportunity  
15 to bring forward evidence and he indicated that he had some  
16 reservation about the standing rule in this circuit, just  
17 the same as Judge Waterman, Judge Timbers and Judge Left  
18 dissenting and in Billy Baxter, SCM expressed their  
19 reservations.

20 However, we went to trial and proved there was  
21 no retaliation and he granted judgment for us and he said  
22 in voew of the facts as found by him, and he found all the  
23 facts in our favor, not only on Tiquisate but on all of  
24 the claims, he says the standing issue has become academic.

25 So, I don't think one can derive very much comfort



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from the summary judgment decision.

Then your Honor is asked to adopt a foreseeability test. That has been rejected by the Court of Appeals and most specifically, Judge Tyler very recently in Hansen, a case cited in our memorandum, explicitly rejects foreseeability as the test.

Finally, your Honor is asked to accept the proposition that there is no rule, there is no guidance or illumination for precedence. The cases rest on their own facts. That proposition is at war with what Judge Mansfield endeavored to do in Calderone. There, instead of just lining up the cases in terms of the categories of the plaintiff, he sought to give us the rationale of the rule. Now, the rationale is pragmatic. It is not logical. He said as a matter of the administration of justice in our overworked courts you have to draw a line and he said we draw a line having in mind certain practical consequences of not drawing a line. He wants to avoid an overkill. He wants to avoid getting the courts bogged down in the determination of speculative claims. He doesn't want the damage demands to be boundless and therefore, building upon the settled rule of the Second Circuit, which incidentally has the support of the greatest judges that have sat in this circuit from Learned Hand, Judge Lombard, Judge

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2 Friendly, Judge Feinberg, Judge Anderson, Judge Mansfield,  
3 just running right down the line. Judge Mansfield said  
4 that the plaintiff has to be in the target area. The cases  
5 prior to Calderone stress that there had to be an immediate  
6 relationship between the plaintiff and the defendants,  
7 between the plaintiff and the victims of the wrongdoing.

8 Judge Mansfield, your Honor, takes the language,  
9 the metaphor from the Ninth Circuit cases. The plaintiffs  
10 rely on the Ninth Circuit cases. There has been an effort  
11 in both circuits to bring two diametrically opposed rules  
12 into harmony. They have achieved verbal consistency. The  
13 cases are still decided contrary to one another on identical  
14 states of fact.

15 Your Honor, analytically, the test of directness  
16 leaves something to be desired. A man whom you greatly  
17 revered as I do, my mentor, Justice Stone, called attention  
18 to the difficulty of judicial application of a direct or  
19 indirect test. Target area is a metaphor. It means something  
20 different in the Ninth Circuit from what it means in the  
21 Second Circuit. If these were the only tools for decision,  
22 a district judge might have trouble. That is where Judge  
23 Mansfield comes in. He explains what are the objectives  
24 of the rule. This gives concretion to the test. You use  
25 the verbalizations in relation to the goals, the objectives.



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2 What are those goals? To narrow the group  
3 of people who can bring the action to those who are in  
4 the very economic sector, the very area of the economy  
5 in which competition has been eliminated by the defendant's  
6 wrongdoing.

7 Your Honor, it makes no difference to me whether  
8 we take these principles and treat them as alternatives.  
9 We use the disjunctive or the conjunctive or we treat  
10 them as identical standards. In this case, there isn't the  
11 immediate, direct relationship between the plaintiff and  
12 the defendants and therefore under Trico and Billy Baxter,  
13 he has no claim and secondly, defining target arer as it is  
14 being defined in this circuit, the plaintiff, a utility,  
15 is not in the sector of the economy that has been tainted  
16 by the alleged wrongdoing, and, thus, we submit, your  
17 Honor, that the complaint has to be dismissed for want of  
18 standing.

19 Now with respect to my second ground --

20 THE COURT: Mr. Handler, I think I have heard  
21 enough for the motion. I think I ought to give Mr. Sokolow  
22 a chance now. My initial impression is favorable to your  
23 proposition but I think we have been now about an hour. I think  
24 we better give the reporter a few minutes' rest then we  
25 resume with Mr. Sokolow.

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2 MR. HANDLER: May I thank your Honor for his  
3 patience.

4 (Recess)

5 THE COURT: Mr. Sokolow, I will let you address  
6 me in any way, shape or order that you prefer, but, I want  
7 to explain first why I indicated that offhand it struck me  
8 that you had the uphill fight and it may be that I don't  
9 understand this first claim, what it is charging, but from  
10 my reading of it, I understand that these three defendants,  
11 and for my purposes, I think there are three, I disregard  
12 the subsidiaries just for simplicity; that SOCAL and Texaco  
13 and Mobil and others have certain monopoly interest in the  
14 Persian Gulf area. I am not able to think of what that means,  
15 but that may be my own fault. I assume that that means  
16 that these three defendants and some others get all the  
17 oil that is produced in the Persian Gulf area and can do  
18 with it whatever they please, and that that is a monopoly.  
19 Then you say that they had a struggle with the Libyan  
20 government and the Libyan government demanded 51 per cent  
21 interest in their operations in Libya, whereas, they had  
22 succeeded in getting an agreement with Saudi Arabia for  
23 25 per cent. So, then I gather that you say that they were  
24 obstinate and adamant as against Libya because, they  
25 reasoned, which seems to me the most natural thing in the



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2 world, that as soon as we agreed to give Libya 51 per cent  
3 of our -- I don't know whether it means physical production  
4 or what the 51 per cent means -- but as soon as we give  
5 Libya 51 per cent, Saudi Arabia will say, you only gave  
6 us 25 per cent and therefore we want the same as you have  
7 given to Libya and we would be undone, "we" the defendants.  
8 So you say, although the independents in Libya gave in  
9 and yielded up the 51 per cent, these varmints said we  
10 won't give in because to give in would be fatal, we have  
11 to product our monopoly in the Persian Gulf. Well, it really  
12 isn't a monopoly because it is a 75 per cent monopoly  
13 because they have already given 25 per cent to Saudi Arabia.

14 Then Librya says we are a sovereign nation so  
15 we will take the 51 per cent whether you agree to it or not.  
16 Now, at that point I don't see what the misconduct of  
17 these varmints has done to hurt the plaintiff because if they  
18 had not been adamant, they would have given up 51 per cent.  
19 They were adamant, they got taken 51 per cent, but the result  
20 is exactly the same.

21 Then you say Libya now gets apparently 51 per  
22 cent of the crude oil produced and Libya, for its own  
23 purposes, and in order to make millionaires of the Libyans  
24 raises the price to NEPCO ans NEPCO, presumably, figures  
25 that it has a contract with LILCO and it has to get oil,

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so it pays the increased price and for some reason, which I am at a loss to understand from the complaint, because the complaint says that LILCO has a contract with NEPCO under which the prices are absolutely specified. Not only that, they are maximum prices; but NEPCO raises the prices anyway because it says we have to now get our oil from Libya. We can't get it from SOCAL, although according to your complaint they have a contract. So, LILCO pays NEPCO and hauls off and brings this lawsuit against these defendants with whom LILCO has no relationships at all and that conception which comes to me from reading the complaint and which may be a misconception, that conception is what led me to feel offhand that there is less to this than meets the eye.

I have attempted to encourage fruitful dialogue or argument from you by just telling you what is on my mind.

MR. SOKOLOW: That is fine. Let me start with what is on your mind, then go to the rest of my argument.

THE COURT: Forget the cases for the moment.

MR. SOKOLOW: I will forget the cases.

THE COURT: For the moment at least.

MR. SOKOLOW: I don't want to forget the facts.

There is one basic misconception in the history as you gave it which I think may perhaps may have misled you.



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2 What happened to the independents in Libya is that they  
3 negotiated with the government of Libya and as a result  
4 of that negotiation, Libya got 51 per cent of the oil.  
5 They got 49 per cent of the oil for their own and that  
6 they had the right to buy the Libyan 51 per cent. That was  
7 the proposal that was offered to these companies with  
8 dominant interests in the Persian Gulf. They refused the  
9 Libyan offer. Libya then nationalized 51 per cent of the  
10 oil. That left 49 per cent for the defendants. The de-  
11 fendants then jointly and conspiratorially refused to lift  
12 their 49 per cent of the oil. They refused to buy any  
13 of the 51 per cent of the oil that belonged to Libya and  
14 which Libya was offering to them. They started a boycott  
15 aimed as their own documents and in our complaint says,  
16 specifically intending to injure the Long Island Lighting  
17 Company and Consolidated Edison. They knew we were in the  
18 target area. They aimed the cannon and they shot us. Nobody  
19 made them boycott, your Honor. They could have continued  
20 with their 49 per cent lifting. Instead they withdrew  
21 from the market leaving one monopolist.

22 THE COURT: They withdrew from the Libya market.

23 MR. SOKOLOW: Yes.

24 THE COURT: There is nothing to prevent SOCAL  
25 from delivering Persian Gulf oil.

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2 MR. SOKOLOW: LIILCO and Con Ed in this city  
3 must burn primarily sulphur oil. That comes from Libya.  
4 They knew that this is a special type of oil. That is  
5 why LIILCO and Con Ed were so important in their plans.  
6 They discussed in their documents closing down the east  
7 coast of the United States.

8 THE COURT: Let's forget the documents. Let's stick  
9 to the complaint.

10 You mean that Libya is the sole source of supply  
11 of oil for Con Ed and LIILCO?

12 MR. SOKOLOW: For making electricity, yes, your  
13 Honor. For all practical purposes. We are required to  
14 burn low sulphur oil and primarily it comes from Libya  
15 and it all came through NEPCO. When that supply was cut  
16 off from us, and that is why we made the allegations in  
17 the complaint about their intent, your Honor. We were not  
18 as in some of the cases purchase of eggs out there. We  
19 were the two largest utilities on the east coast. Those oil  
20 companies who we were and the environmental regulations.  
21 They knew from the moment they refused to lift their 49  
22 per cent of oil, the east coast would be shut down if this  
23 boycott was successful. What their complaint is is that the  
24 Libyan government broke the boycott despite their 25 lawsuits  
25 and chasing oil around the world, the Libyans broke the



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2 boycott so it was not totally successful. That is the  
3 only way we got oil, the only reason there haven't been  
4 brownouts and blackouts in the New York area, not due to the  
5 patriotic motives of the defendants, if any.

6 THE COURT: You mean if Libya were tomorrow  
7 to say we won't ship any oil to the United States, that  
8 LIICO and Con Ed will blackout immediately? In other words,  
9 we here in this area are completely dependent on Libya?

10 I must say I never realized that and I don't find  
11 it in this complaint.

12 MR. SOKOLOW: We do allege we are required to  
13 burn low sulphur oil by government law.

14 THE COURT: The only low sulphur oil in this world  
15 comes from Libya?

16 MR. SOKOLOW: It is the largest supplier.

17 THE COURT: That is a different thing.

18 MR. SOKOLOW: I know of no other except in  
19 Venezuela.

20 THE COURT: Your complaint says they found a  
21 substantial quantity of low sulphur crude oil in Libya.  
22 It doesn't say and this is the only low sulphur crude oil  
23 in the world. I am startled.

24 MR. SOKOLOW: Libya I am informed is the  
25 primary sulphur source of low sulphur crude for the world

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and the only way up to recent times to produce .3 sulphur residual fuel oil which we have to burn here in New York is from Libyan oil.

Today we can do several things. We are building desulphurization plants and it is possible in time SOCAL has a desulphurization plant. If they had done that with that high sulphur oil from the Gulf and given it to us, it would have taken the place but right now there is no other way to do it other than Libya.

THE COURT: All you are telling me is that Libyan crude is better for producing low sulphur residual oil than other crude oils, but you are not really saying that that is the only way you could get low sulphur crude oil. It is a question of price.

MR. SOKOLOW: It is the only way for all practical purposes. In a few years when there are enough desulphurization plants, there will be other ways but it is the only way today. So we were dependent upon Libya. That is why Libya was so important. It was important to the east coast of the United States but the Persian Gulf was the only thing on the minds of the defendants.

THE COURT: Suppose these defendants had given in and given Libya 51 per cent instead of having it nationalized. Why wouldn't the result be exactly the same?



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2 MR. SOKOLOW: There would have been competition  
3 for the first time in Libya. We would have had the de-  
4 fendants competing with the Libyan government which might  
5 have owned the 51 per cent and the oil companies would  
6 have learned competition and the price of low sulphur  
7 fuel would have come down. That would have been fine, but  
8 instead, SOCAL withdrew totally. The Libyan government  
9 producing for its 51 per cent couldn't produce the amount  
10 of crude oil that we needed here so we got less than we  
11 wanted. If they had stayed in there, not boycotted, not  
12 jointly refused to deal with NEPCO and with us, if they  
13 supplied us after they cut NEPCO off, then perhaps this  
14 mess would not have happened, but they were determined  
15 to boycott, your Honor, and the reason they were determined  
16 to boycott was because nothing was more important to them  
17 than protecting their interest in the Persian Gulf and the  
18 east coast went by the boards. Fortunately the boycott  
19 was broken but at enormous cost to Con Edison and LILCO.

20 THE COURT: You have a perfectly solvent NEPCO.  
21 You never bought any oil from these defendants. I still  
22 don't understand it, Mr. Sokolow. You say they wouldn't  
23 sell you oil. I don't know any law that compels them to  
24 sell you oil. You never were one of their customers.

25 MR. SOKOLOW: I don't know there is any law that

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compels them to sell but a refusal to sell pursuant to a conspiracy which I have the right to establish to keep a boycott going may be very illegal no matter how legal it may be otherwise, your Honor. What they could do lawfully, they couldn't do if they did it pursuant to a conspiracy and if the reason they refused to deal with LIICO and Con Ed directly was because they wanted to be sure that the Libyan boycott was not broken, then that is an illegal act and furthermore, it was an illegal act that they did it together. Whatever they might have done individually, they had no right to do together and conspiracy is a crime and conspiracy to restrain trade and monopolize is also a crime and a violation of the Sherman Act.

THE COURT: What was the trade that they were trying to monopolize?

MR. SOKOLOW: Low sulphur crude oil imported into the United States.

THE COURT: So they continued to ship low sulphur crude oil into the United States cutting out the Libyan government.

MR. SOKOLOW: They did not. They refused to ship low sulphur. They just withdrew and did nothing.



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THE COURT: I must say, it sounds like Alice in Wonderland to me. In other words, they put themselves out of business?

MR. SOKOLOW: They certainly did, except that --

THE COURT: If a man wants to go out of business, can't he go out of business?

MR. SOKOLOW: If a man wants to go out of business --

THE COURT: They didn't monopolize the import of low sulphur oil because you just told me they didn't import any oil.

MR. SOKOLOW: They refused to lift oil and the Libyan Government lifted whatever they call them, concessions, and sent it here. That is how the boycott got broken. They were willing to risk the losses.

Alice in Wonderland it may be, because they had more fish to fry elsewhere in the world.

I should point out that Mobil has in fact settled with the Libyan Government and has in fact agreed to the 51%-49%.

Your Honor, in essence, the LILCO complaint which we filed in May alleges that there was a conspiracy which started some time, we don't know exactly when, but since 1971 when the London Policy Group was formed and this group

1 rk:mg 2

2 has been actively pursuing anti-competitive goals since.

3 THE COURT: What was the object of the conspiracy?  
4 To get LILCO and Con Ed?

5 MR. SOKOLOW: If your Honor would let me talk,  
6 with respect to the documents we have seen --

7 THE COURT: I don't want to hear about the docu-  
8 ments. Look at your complaint.

9 MR. SOKOLOW: The object of the conspiracy as it  
10 came into full flower in mid-September or early Septebmer,  
11 1973, was for the purpose of protecting its interest in the  
12 Persian Gulf, to boycott and to refuse to lift Libyan oil.

13 THE COURT: In other words, because they had a 25%  
14 deal with Saudi Arabia and the Libyan Government was in-  
15 sisting on a 54% deal. Is that what I am to gather from  
16 this complaint?

17 MR. SOKOLOW: That is one of the reasons they did  
18 it but that didn't make them lawful. Who said these people  
19 who were supposedly competitors could sit down in a room  
20 and talk to each other about how they were going to deal  
21 with foreign governments?

22 THE COURT: And to help your people out, you say,  
23 I take it, logically, that they should have sat down and  
24 thrown in the sponge and given away all of their interests  
25 if Libya had demanded it? Libya only demanded 51% but if



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2 they demanded 100%, you say throw in the towel, otherwise  
3 you violate the Sherman Act?

4 To me that sounds like nonsense.

5 MR. SOKOLOW: I didn't say it. You said it. I  
6 draw the line on the facts that occurred here and the  
7 papers I have seen. That is where the conspiracy was work-  
8 ing. They had the opportunity to have 49% of the oil and  
9 to buy back the other 51% but they refused to do it.

10 THE COURT: Mighten't it be that today 51%, tomor-  
11 row 71, the day after tomorrow, 91?

12 MR. SOKOLOW: That is the risk of doing business  
13 in somebody else's country, Judge Wyatt.

14 THE COURT: Of course it is and that is why I  
15 don't understand how their attempts to do business as best  
16 they could in Libya gives rise to any claim by these people  
17 under the Sherman Act.

18 MR. SOKOLOW: My point is, your Honor, they did  
19 not do business as best they could. They did no business  
20 at all in Libya. They made no attempt to do business in  
21 Libya. They fended off any suggestion the Libyan Government  
22 made because they had made up their minds from the beginning  
23 there would be no settlement with the Libyan Government.  
24 It didn't make any difference what Libya proposed, nothing  
25 was satisfactory.

1 rk:mq 4

2 THE COURT: You say that if Libya had said we  
3 will settle on the same basis as Saudi Arabia, 25%, you say  
4 these people would not do it? Isn't that exactly the  
5 kind of deal they were trying to get from your argument?

6 MR. SOKOLOW: Suppose they said they want 26%,  
7 27%, is that still legal? I think they had no right to  
8 do this in concert, your Honor. Whatever any one of  
9 them--

10 THE COURT: I won't ask questions now. I will  
11 give you a chance and what I want you to do is to make me  
12 sympathetic with your point of view because at the moment  
13 I am having difficulty.

14 MR. SOKOLOW: I wish I could, your Honor.

15 First I want to point out how this boycott was  
16 handled, because I think I have to persuade your Honor of  
17 the seriousness of the antitrust conspiracy which occurred  
18 here.

19 Having orchestrated a group boycott as I allege  
20 in the complaint in September of 1973, they just didn't  
21 stop digging up oil. They did more than that. They filed  
22 25 lawsuits around the world with the purpose of stopping  
23 NEPCO from lifting oil under its arrangements with the  
24 Libyan Government.

25 Now, I don't think whatever right they may have had



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2 to stop lifting oil, they did not have the right to bring  
3 25 lawsuits, particularly in the light of what their docu-  
4 ments show.

5 I will not tell you about that, your Honor, because  
6 your Honor does not want to hear it but in light of what  
7 their documents show, they had no right to bring any one of  
8 these 25 lawsuits, much less 25. They had no right to get  
9 the executives of NEPCO on the telephone within five min-  
10 utes of each other.

11 First an executive of SOCAL saying to NEPCO, "Don't  
12 you dare lift any of that oil because we are going to take  
13 all steps necessary to protect our interest."

14 Five minutes later SOCAL is on the telephone.

15 Do you think those two calls occurred by coincidence?  
16 Whatever they might have done unilaterally, they can't do  
17 jointly.

18 That is the work of a conspirator. NEPCO protested  
19 and in writing and orally said to SOCAL and to Texaco, if  
20 you do this to us, you are going to shut down the East  
21 Coast of the United States and you will do irreparable  
22 damage to LILCO and Con Edison. Those two utilities men-  
23 tioned by name.

24 The answer of the oil companies was that they were  
25 going to continue the boycott.

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That's what they did, your Honor.

Returning to the question of standing, I think that is kind of interesting because all of the defendants have different candidates they would like to nominate to have standing here. The only trouble is, some of the candidates can't run or won't run.

It appears that the latest candidate that the defendants have after originally tapping Libya, and the Persian Gulf is the likely candidate to sue since they were the targets, now they say NEPCO, of all people, is the only one with the right to sue. NEPCO is an oil company. It imports oil, it refines it. It is not subject to the control of the Public Service Commission. It is a partner of SOCAL in a refinery in the Bahamas and if it defaults on its debt, SOCAL will become a 100% partner in that refinery. It is directly dependent on the oil companies for survival. NEPCO hasn't sued.

I asked NEPCO to sue and they refused. LILCO sued NEPCO in the state court.

Do you think NEPCO impleaded the oil company defendants? Not on your life.

If we can't redress the grievances for this anti-trust conspiracy that is here, NEPCO is not going to do it for us.



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2 THE COURT: Has the state court complaint of  
3 LILCO against NEPCO been filed?

4 MR. SOKOLOW: Yes, your Honor.

5 THE COURT: I am distinguishing between serving  
6 and filing. In other words, it is a matter of public  
7 record?

8 MR. SOKOLOW: Yes.

9 THE COURT: Of which I could take judicial  
10 notice?

11 MR. SOKOLOW: Yes.

12 We did sue them out there. They told us they were  
13 going to implead the oil company defendants and they didn't  
14 do it and I don't think they will.

15 Sometimes it suggests in these papers that the  
16 only claim lies with plaintiff's customers. We must have  
17 seventeen million customers in this area. I don't know  
18 the precise figure. It is obvious that not a single one  
19 of those customers have any interest in this litigation.  
20 All that they know is that their cost of electricity is  
21 going up and they are not going to sue.

22 As a paractical matter and prgamatically Professor  
23 Handler says is the way the cases have been going, you have  
24 two plaintiffs, LILCO and Con Edison who are ready, willing  
25 and able to sue and to finance the litigation to redress

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the wrongs which we believe have been done.

We have each said in our complaints that to the extent we are successful in recovering back excessive fuel costs which is only one small part of the damages that we allege, we have said that we will refund that to the consumer pursuant to the jurisdiction of the Public Service Commission.

So your Honor won't have to do, if this case continues, as you did in the Pfizer case, try to divide up the pot for everybody.

The cases Professor Handler mentions, in our judgment, are not pertinent. A patent licensor can't sue because the injury was directed at his licensee. A landlord can't sue because the injury was directed at the tenant. A stockholder can't sue because the injury was directed at the corporation.

We don't have any relationship with NEPCO. We don't stand to profit like the patent licensor from anything that NEPCO does. We don't have any indirect control over NEPCO or any economic interest in its revenues or what it does.

We are an entirely different novel situation from the traditional cases cited by Professor Handler. It is not correct, as he said this afternoon, that we are urging



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the minority rule in the Billy Baxter case, although some day that may be the rule of the Supreme Court.

We think we satisfy the Billy Baxter rule which was, namely, that you only have to establish a causative link to the injury to show that it is direct rather than incidental or that we were in the target area of the illegal actions.

If you go back, your Honor, to the early days of the oil companies' relationships with LILCO and Con Edison, they tried to deal directly with LILCO and Con Ed, but we already had contracts with NEPCO.

They then agreed that they would guarantee the performance by NEPCO of its contracts.

SOCAL knew that NEPCO was a mere conduit. He knew all along, SOCAL, that sitting here in New York with two of the largest customers, LILCO and Con Ed.

The complaint alleges and the documents will support this, your Honor, that the defendants were warned that if they engaged in the boycott which they threatened, it would cause irreparable injury to Long Island Lighting Company and Consolidated Edison, not to NEPCO.

That is what the NEPCO documents said.

I think I just want to say a short word, your Honor, on the passing-off doctrine which Professor Handler

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2 didn't mention at all. That is urged here as a defense.

3 We have alleged six kinds of damage in the complaint, only  
4 one of which may be subject to that defense.

5 We believe this was definitively disposed of by the  
6 Hanover Shoe case and that there is no such rule as defend-  
7 ants urge that only the first purchaser can sue.

8 Case after case, and we have cited them in our  
9 brief, your Honor, show that intermediate purchasers,  
10 second tier, third tier purchasers have been able to sue.

11 I wind up where I began, your Honor, there has  
12 been a terrible violation of the antitrust laws at this  
13 time.

14 I am sure if the Department of Justice knew what  
15 I now know, every one of these business review letters would  
16 have been recalled.

17 The only parties that are here as a pragmatic  
18 matter who can redress these grievance or at least try  
19 them to see if we have real grievances are these particular  
20 plaintiffs and I respectfully request that the motions to  
21 dismiss on the grounds of standing be denied.

22 THE COURT: Mr. Sokolow, you have just referred  
23 to these violations of the antitrust laws. I don't want  
24 to ask any more questions and the only reason I ask these  
25 questions now, I want to be sure what violations took place.



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2 When we spoke before, I understood you to say that  
3 the violation that you principally complained of was a boy-  
4 cott these three defendants of Libyan oil.

5 MR. SOKOLOW: At page 142 of our brief, we refer  
6 to the Attorney General Keupfer's last so-called business  
7 review letter to the oil companies.

8 They have been periodically getting these docu-  
9 ments every year, I don't know for how many years. Those  
10 business review letters say in substance that it wasn't the  
11 present intention of the Antitrust Division to bring suit  
12 based upon the facts known to us and as your Honor knows,  
13 those business review letters are not binding upon the  
14 Government and they are certainly not binding upon us, but  
15 in that last business review letter, in a letter written  
16 October 5, 1973, after the defendants had done some of  
17 the things they had done, Mr. Keupfer said that the Anti-  
18 trust Division did not sanction joint action which reduced  
19 the supply of oil to the United States; did not sanction  
20 joint agreements to halt production; did not sanction joint  
21 agreements to refuse to lift oil; did not sanction boy-  
22 coting of oil from any country; did not sanction chasing  
23 hot oil.

24 Every one of those items, your Honor, is what they  
25 did here and every one of those items is not sanctioned by

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2 the Antitrust Division.

3 Those are the Antitrust violations involved in  
4 this case and all of those items are necessarily involved  
5 in this all-encompassing word that I have used, "boycott."

6 THE COURT: In other words, the refusal to give up  
7 the 51%, you don't rely on that?

8 MR. SOKOLOW: It is a factor. They may have done  
9 that unilaterally. I don't think they could have done it  
10 lawfully.

11 THE COURT: You mean when an American company  
12 deals with a sovereign nation like Libya, the antitrust  
13 laws of the United States forbid it to do anything but just  
14 act alone?

15 MR. SOKOLOW: That is why the oil defendants --

16 THE COURT: I would say that would throw the busi-  
17 nesses of this country at the mercy of every foreign nation  
18 in which business from this country operates.

19 MR. SOKOLOW: It was of obvious great concern to  
20 the Government that there might be antitrust jurisdiction  
21 otherwise how do you explain them running into the Anti-  
22 trust Division to get the letter.

23 They weren't going in there for an inoculation.

24 THE COURT: Does the letter give them immunity?

25 MR. SOKOLOW: It is what we used to call the old



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2 railway release letter. It says: Based upon the facts you  
3 told us, it is not the present intention of the Department  
4 to prosecute you for this; so they possibly went in there  
5 and told the Department of Justice, "We are going to negotiate  
6 jointly, with let's say Libya," and the Department of Justice  
7 may very well have said, "Okay, it is not our present inten-  
8 tion to sue you if you do that jointly."

9 What the Department of Justice doesn't know is  
10 what they really did when they got to those negotiations  
11 with Libya and nobody has been able to tell the Department  
12 of Justice about it because our brief has been sealed.

13 THE COURT: So the picture that you suggest is,  
14 that under the Sherman Act, the petroleum-supporting countries  
15 can gang together and associate themselves jointly in an  
16 office in Vienna, but everybody who deals with them has to  
17 go there singly, every American oil company has to go into  
18 Vienna singly and can't have any association with any other  
19 American company?

20 MR. SOKOLOW: I don't say that, your Honor. I  
21 think what they have to do is do what they did do, namely,  
22 go to the Antitrust Division and say: It is not practical  
23 as a business matter for us to deal individually with Kuwait  
24 or Libya. We have to go together but we want your assurances  
25 that if we go together, you won't sue us, and the Department

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2 of Justice each time has said, "Yes, but this last letter  
3 from the Department of Justice says, they say, 'go ahead  
4 and negotiate as a group, but we will not give you the  
5 additional rights of jointly declining to produce oil, of  
6 chasing hot oil.'"

7 All of the things the Department of Justice said  
8 they can't do, they did, and the Antitrust Division was right  
9 in adding that and it is too bad it wasn't in there earlier  
10 because it might have prevented this.

11 THE COURT: Returning to the part of your injury;  
12 what efforts did the plaintiffs make to get some oil from  
13 these wonderful independent people that were doing business?

14 MR. SOKOLOW: Our client contacted everybody as  
15 did NEPCO. We have this-- that is, the people they contacted.  
16 I don't have this by deposition of the LILCO and Con Ed  
17 people. I think it is fair to state that we approached  
18 many oil companies and we couldn't get it. They told us  
19 they had contracts with others. Under the NEPCO approach,  
20 to Mobil, they approached all of the big oil companies, they  
21 couldn't get it.

22 I think we are entitled to prove that the reason  
23 we didn't get that oil, because if they gave us the oil,  
24 they would break their own boycott and this is why they  
25 didn't give it to us.



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2 THE COURT: The stark fact is, you did get the oil.

3 MR. SOKOLOW: We did not get all the oil we  
4 wanted. We got some oil from the Libyan Oil Company.

5 THE COURT: Paragraph 41 says in spite of all  
6 threats, NEPCO did lift the oil which it purchased from  
7 Libya.

8 MR. SOKOLOW: We were talking about that time of  
9 two particular liftings made by NEPCO at the time. There  
10 is no question about the fact that NEPCO did get Libyan  
11 Government-owned oil throughout the period and we purchased  
12 it, but it was not in the quantities that we had sought  
13 and if SOCAL and Texaco--

14 THE COURT: Where do you allege that you have ac -  
15 tually the black-out and brown-out and you shut down your  
16 plants? I don't find that anywhere. At least I don't  
17 remember it.

18 MR. SOKOLOW: I can't find it at the moment.

19 THE COURT: In Paragraph 49 you say that the injury  
20 that you suffered was because you had greatly increased cost  
21 for its low sulphur residual oil requirements.

22 To me, that sends the message that you got the  
23 oil but you had to pay more for it.

24 MR. SOKOLOW: You see how unintentionally you  
25 are hobbling me on this argument by not letting me refer to

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2 the documents in the case?

3 THE COURT: This is not a motion for summary  
4 judgment. This is a motion that says your complaint does not  
5 state a claim--

6 MR. SOKOLOW: Just to answer your specific ques-  
7 tion which I don't think relates to the complaint; those  
8 documents produced from the files of NEPCO in communication  
9 to the defendants show NEPCO saying that if you go forward  
10 with this boycott, you will cause brownouts and blackouts  
11 and you will do irreparable injury to Con Ed and LILCO and  
12 we did refer to those documents in our brief and they have  
13 exhibit numbers.

14 THE COURT: I am willing to assume that, but they  
15 did go ahead with the boycott and you didn't have any  
16 brownouts and you didn't have any blackouts.

17 All you had was increased cost for your oil.

18 MR. SOKOLOW: That is not all we had. We had  
19 shortages of oil and as a result of the shortages, there  
20 were a lot of things we couldn't do. We have a whole  
21 series of different types of damages that we allege in our  
22 brief.

23 Page 116 of our brief --

24 THE COURT: No, I am looking at the complaint.

25 Also, NEPCO, I assume, is solvent and I am looking



1 rk:mg 17

2 at Paragraph 26 and you say that under this agreement which  
3 runs into March 31, 1980, you have a fixed price determined  
4 by reference to the New York Harbor Cargo price.

5 Not only you have a fixed price, but you have a  
6 maximum price.

7 So I don't see how under the averment in Paragraph  
8 26 you could possibly be hurt?

9 In other words, I don't understand how, really,  
10 the motion should not be decided from the bench.

11 Yousaid: We have a fixed price contract with  
12 NEPCO and you haven't said NEPCO is insolvent. In fact,  
13 you have indicated throughout that NEPCO is really a fat cat  
14 and if you have a fixed price contract with NEPCO and you  
15 are protected by a maximum price provision, I don't under-  
16 stand how you could possibly be here.

17 MR. SOKOLOW: NEPCO took the position that a force  
18 majeure clause in the contract prevented those contractual  
19 terms from being in operation and that is their defense  
20 to the action. The force majeure is invoked because of what  
21 SOCAL and the other defendants did. We are suing NEPCO  
22 out there for our damages and I trust we will be successful,  
23 but the damages that we sustain from these defendants are  
24 far more than just the damages that you are talking about,  
25 about increased fuel cost, and I did allege them in the

1 rk:mg 18

2 complaint starting with Paragraph 49.

3 THE COURT: I am sorry I seem unsympathetic but  
4 you know I can only call it as I see it.

5 MR. SOKOLOW: I understand, your Honor.

6 THE COURT: I want to give you every chance, as  
7 I say, to change my mind.

8 MR. SOKOLOW: I think we will rest on the oral  
9 argument and the briefs we have given you.

10 MR. HANDLER: May I respond briefly?

11 THE COURT: Bey very brief.

12 MR. HANDLER: Your Honor, we start off with the  
13 concession brought out by your questioning that no illegality  
14 is being claimed by virtue of the joint bargaining between  
15 the members of the London Group and the Libyan Government.

16 The case, therefore, is reduced to a claim of boy-  
17 cott. Boycott of whom? Boycott of the Libyan Government.  
18 If the theory is that kind of a boycott, the plaintiffs  
19 don't have standing to bring suit regardless of the knowledge  
20 of the boycotting parties that the boycott might have injured  
21 them.

22 Boycott of NEPCO? The same proposition.

23 Your Honor, Mr. Sokolow saw fit to go outside of  
24 the complaint to make many stateemnts of fact which are not  
25 in the complaint. There isn't an allegation of intent.



1 rk:mg 19

2 He also tells you that there was a boycott of the  
3 plaintiffs.

4 YOur Honor, there is no allegation of a boycott of  
5 the plaintiffs.

6 There is an allegation 48 "After notification by  
7 NEPCO of its price increase, LILCO tried to obtain residual  
8 from other sources. No member of the OPEC made an offer."

9 Given his argument of the benefit of all the docu-  
10 ments, first as to documents that are going to show some  
11 kind of a nexus between the defendants and the plaintiffs;  
12 all that would add up to is the element of intent and that  
13 would have been held relevant under the case law.

14 Your Honor, suppose Libya had not raised the price  
15 of oil. NEPCO could have obtained oil from Libya, from  
16 NOC and if they obtained the oil at the preexisting prices,  
17 what would have been the nature of the injury?

18 Isn't it abundantly clear that the causative ele-  
19 ment here upon which reliance is placed was the action of  
20 the Libyan Government, not the action of the defendants.

21 You have had a very strange argument made to  
22 you which we ought to pause for a moment on. You are being  
23 asked to hold for the first time in the history of the  
24 antitrust laws that if a person conceivably has a right of  
25 action, does not sue or will not sue, that somebody under

1 rk:mg 20

58

2 the law does not have a right of action somehow or other  
3 obtains that right through others in an action, not by a  
4 transfer of the claim, but by an action.

5 You could take each of the decided cases, your  
6 Honor, where they held that the plaintiff could not sue  
7 and they indicated who could sue.

8 Take Tricot, they said that the licensee was the  
9 one who was aggrieved, not the licensor.

10 Would Judge Tyler have permitted the licensor  
11 to sue if it appeared that the licensee could not sue?

12 Could RCA have maintained the suit by showing that  
13 the competitors of SCM would not sue?

14 You could ask that question of every case and I  
15 say that is not the way in which you satisfy standing.

16 So, we say for all of the reasons outlined in  
17 our brief and my oral argument, that the complaint should  
18 be dismissed.

19 THE COURT: Do you want to say anything more?

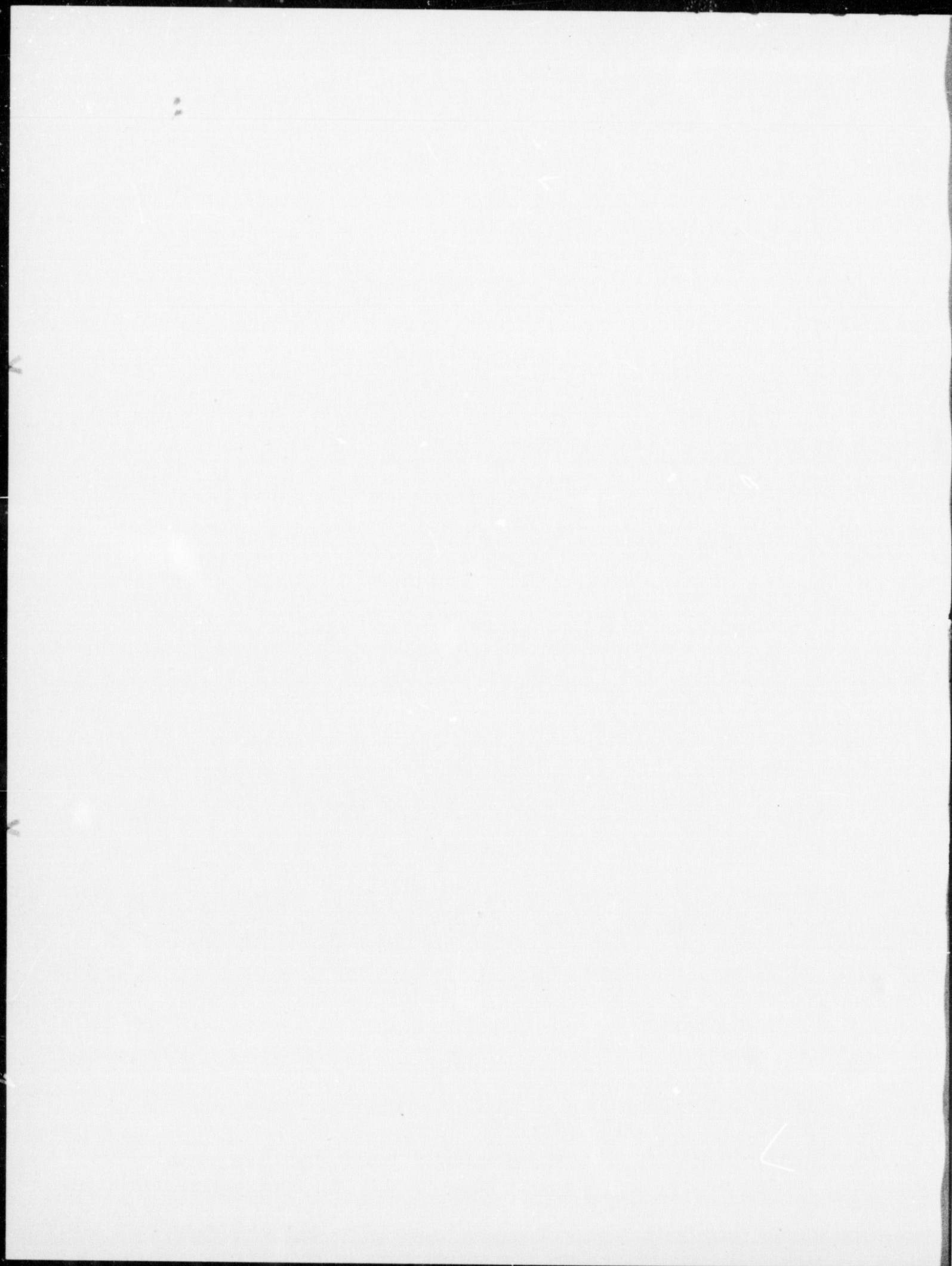
20 MR. SOKOLOW: No, thank you, your Honor.

21 THE COURT: Anybody else have anything to say?

22 Mr. Clerk, we will be in recess.

23 ...  
24  
25





Opinion of the District Court

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

----- x

LONG ISLAND LIGHTING COMPANY,

Plaintiff,

-against-

74 Civ. 2233

STANDARD OIL COMPANY OF CALIFORNIA,  
TEXACO INC., MOBIL OIL CORPORATION,  
CHEVRON OIL TRADING COMPANY AND  
TEXACO OVERSEAS PETROLEUM COMPANY,

Defendants.

----- x

CONSOLIDATED EDISON COMPANY OF  
NEW YORK, INC.,

Plaintiff,

-against-

74 Civ. 2645

STANDARD OIL COMPANY OF CALIFORNIA,  
TEXACO INC., MOBIL OIL CORPORATION,  
CHEVRON OIL TRADING COMPANY AND  
TEXACO OVERSEAS PETROLEUM COMPANY, .

Defendants.

----- x

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*Opinion of the District Court*

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*Opinion of the District Court*

WYATT, District Judge,

This is a motion by all defendants to dismiss the first and second claims of the complaint in the first action (74 Civ. 2233) and the first claim of the complaint in the second action (74 Civ. 2645). Fed. R. Civ. P. 12(b)(6)

These are two separate civil actions, separately commenced. Plaintiff in the first action is Long Island Lighting Company (Lilco). Plaintiff in the second action is Consolidated Edison Company of New York (Con Ed). The five defendants in each action are the same. They are three major oil companies - Standard Oil Company of California (SOCal), Texaco, Inc. (Texaco), and Mobil Oil Corporation (Mobil) - and a subsidiary of SOCal and a subsidiary of Texaco. For simplicity, the two subsidiaries will be disregarded and included in any mention of SOCal and Texaco.

These two actions were consolidated by order filed August 23, 1974. In the federal courts, consolidation does not destroy the separate character of the actions. There may be consolidated discovery procedures and there may be a joint trial of the two actions but each action preserves its separate identity. Johnson v. Manhattan Ry. Co., 289 U.S. 479, 496-97 (1933); Zdanok v. Glidden Co., 327 F.2d 944, 950 n.6 (2d Cir. 1964); McAlister v. Guterma, 263 F.2d 65, 68-69 (2d Cir. 1958); Greenberg v. Giannini, 140 F.2d 550 (2d Cir. 1944) (L. Hand, C.J.); Abrams v. Occidental Petroleum Corp., 44 F.R.D. 543, 547 (S.D.N.Y. 1968)



On the return day of this motion, there were also two other motions, one by SOCal and the other by Mobil. These two other motions were adjourned without date, to permit the present motion to be heard and decided first, before considering the other two motions.

The present motion is directed to the complaint in each of the two actions. The questions raised, however, are the same since the complaints in respect of the claims involved are substantially the same. For simplicity, this opinion will consider only the first claim of the complaint in the Lilco action. The decision as to this claim will necessarily govern as to the second claim of the complaint in the Lilco action and as to the first claim of the complaint in the Con Ed action.

The memorandum for movants refers to a few matters outside the complaint, these apparently not the subject of dispute. Lilco, in opposing the three motions, has submitted extensive affidavits. This procedure was probably followed by counsel for Lilco because one set of papers has been submitted by them, opposing all three motions and on one at least of the other motions an affidavit was submitted by the movant. In any event, the decision of the present motion is based solely on the complaint. Affidavits have been excluded and not considered.

Fed. R. Civ. P. 12(b)

*Opinion of the District Court*

**The First Claim of the Complaint  
in the Lilco Action**  
(numbers in parentheses refer to  
paragraph numbers of the complaint)

The claim arises under Sections 1 and 2 of the Sherman Act (15 U.S.C. §§ 1, 2) and under Sections 4 and 5 of the Clayton Act (15 U.S.C. §§ 15, 26). Jurisdiction is laid under 28 U.S.C. § 1337 and appears to exist.

Lilco is an electric utility serving customers on Long Island (3). It needs each year about 7-1/2 million barrels of low sulphur oil, out of an annual requirement of about 21 million barrels of oil of all types (24).

For some years, New England Petroleum Corporation (Nepco) has been the sole supplier of oil to Lilco (25). Nepco is one of the largest "independent" importers, refiners, and distributors of oil (14).

SOCAL and Texaco in the early 1960's found in Libya (a sovereign state) a "substantial quantity" of low sulphur crude oil. They produced this crude oil in Libya through a jointly owned corporation (Amoseas). SOCal made a long term agreement with Nepco under which SOCal agreed to supply Nepco with substantially all of the share of SOCal of the output of Amoseas in Libya. This crude oil was to be delivered by SOCal to a refinery in the Bahamas (Borco). Borco was owned 65% by Nepco and 35% by SOCal. The effect of the Nepco-SOCAL agreement was to make Libya the major source of low sulphur oil for the East Coast of the United States. (10, 12, 27)



*Opinion of the District Court*

There is an agreement between Nepco and Lilco under which Nepco is obligated until March 31, 1980, to supply Lilco with all its requirements of low sulphur oil. The price to Lilco is determined by reference to a published cargo price per barrel, but the agreement "established certain maximum prices". (25, 26)

The general conclusory averment, meaningless except as supported by fact averments, is that defendants and others have conspired to and have monopolized trade in low sulphur oil to be imported into the East Coast of the United States. "A major objective of the conspiracy was and is to protect the monopoly interests of the defendants and others in the Persian Gulf area." No other objective of the conspiracy is averred. Specifically, there is no claim that injury to Lilco was an objective of the conspiracy. Indeed, there was no competition between Lilco and defendants nor did Lilco buy any oil from defendants. There is an averment that defendants knew that the carrying out of the conspiracy would "materially damage" Lilco. (22)

The "Organization of Petroleum Exporting Countries" (OPEC) is made up of all major oil producing countries. The "London Policy Group" (LPG) is made up of most free world oil companies, including defendants, and was apparently formed to bargain with OPEC. (16, 28) There are a number of averments as to LPG activity but, while evidence as to this might be admissible if there were a trial, they seem to add nothing to the claims of activity by defendants themselves and for present

*Opinion of the District Court*

purposes may be disregarded.

In 1972 defendants reached agreement with a number of Persian Gulf oil exporting countries, including an agreement whereby Saudi Arabia secured a 25% participation in a corporation (Aramco) theretofore owned entirely by defendants and another oil company. Aramco produces crude oil in Saudi Arabia. (11, 29)

In August 1973 a number of smaller oil companies made agreements with Libya under which 51% of the oil produced by them in Libya would belong to Libya, 49% would belong to the companies, and the companies had the right to buy from Libya most or all of its 51% of the oil. (30)

Libya offered the same agreement to defendants but they "concertedly" rejected this offer. The reason was that acceptance would have "jeopardized" the "more valuable holdings" of defendants in the Persian Gulf area. (31) Presumably the reasoning of defendants was that if they agreed with Libya on a 51% participation, then Saudi Arabia and the other Persian Gulf countries would want the same percentage or at least more than the 25% participation which had been negotiated.

The Libyan Government then nationalized a 51% interest in Amoseas, the producer in Libya jointly owned by SOCal and Texaco. (33)

SOCal then suspended all deliveries to Nepco of Libyan crude oil. (34) Nepco protested that this was a breach of contract but SOCal "stood firm", its motive being to protect the Persian Gulf interests. (35)



*Opinion of the District Court*

Nepco then made an agreement with Libya under which Nepco bought from Libya about the same amount of crude oil "that SOCal previously had been supplying". Libya, however, raised the price and Nepco was obliged to pay Libya "substantially higher prices" than it had been paying SOCal. (36; it seems clear that these "higher prices" demanded by Libya are the real and only root of any evil ultimately visited upon Lilco)

After Nepco had made its purchase agreement with Libya, the conspirator defendants attempted to prevent Nepco from buying oil from Libya or from hauling, refining and distributing it to Nepco customers, among which was Lilco. Their attempts included threats and the bringing of "groundless legal actions around the world". (37-45)

Nepco defeated all these attempts by defendants and was able to bring the oil from Libya. Nepco therefore "succeeded in . . . supplying its customers, including Lilco." (46)

Because Nepco was paying higher prices to Libya for low sulphur crude oil, Nepco demanded higher prices from Lilco for low sulphur residual oil (left after refining crude). The "price charged Lilco by Nepco for low sulphur residual oil continued to rise precipitously". (47) Lilco tried to get oil elsewhere but no oil company in the London Policy Group "submitted an offer". (48)

Lilco had to pay higher prices to Nepco for its oil requirements and this is the chief injury here alleged. (49) Other items of damage are also alleged. (50-56) As to the

*Opinion of the District Court*

damages from "fuel price increases", Lilco avers that "a portion" of such increases has been passed on by it to its electric customers and that, if Lilco recovers for these increases from defendants, refunds will be made to the customers to the extent the Public Service Commission approves. (55)

As noted before, Lilco had a contract with Nepco which contained price provisions and established maximum prices. Accordingly, Lilco commenced an action for breach of contract against Nepco (the complaint in the action against Nepco bears the same date as the complaint in the case at bar). The action against Nepco was brought in the New York Supreme Court, Nassau County. The complaint avers in substance that the increase by Nepco of its prices to Lilco was in breach of their contract. Damages of \$62,000,000 are demanded. The averments of damage in the complaint against Nepco (paragraphs 15-22) are substantially the same as in the complaint at bar (paragraphs 49-54).

There is no averment in the complaint at bar about the commencement of the action against Nepco but, as was recognized at oral argument on this motion, judicial notice thereof may properly be taken since the pleadings in the action against Nepco are "public documents". Zahn v. Transamerica Corp., 162 F.2d 36, 48 fn.20 (3d Cir. 1947); see also Coman v. Coman, 492 F.2d 273, 276 fn. 5(3d Cir. 1974); McCormick on Evidence (2d ed.) 766

1.

Plaintiff is not a competitor of defendants nor has it ever bought any of their products. Plaintiff is a customer of



*Opinion of the District Court*

a former customer of one of the defendants. This one defendant did at one time have business transactions with its customer Nepco, to which it sold oil; it had no such transactions with plaintiff.

The complaint charges that violations of the antitrust laws by defendants caused injury to plaintiff. The nature of these violations is difficult to discover from the complaint; in this respect the complaint is most general and conclusory. For present purposes, however, it will be assumed that the complaint is sufficient to charge some kind of antitrust violations.

No anti-competitive conduct of defendants, however, was directed against plaintiff. Nothing of this sort is claimed by plaintiff; the most claimed is that defendants knew that plaintiff was a customer of Nepco, was a large user of oil, and could be injured by price increases, along with all other users of oil.

Whatever the motives of defendants, up to the nationalization by Libya in September 1973, nothing done by defendants could possibly have affected plaintiff. In this period, the conduct of which plaintiff complains is that defendants concertedly rejected the proposal of Libya for a 51% participation. Libya then took the 51% by force. The result was precisely the same as if defendants had done what the complaint suggests they should have done, namely, agree to give up the 51%.

*Opinion of the District Court*

After the nationalization by Libya, SOCal, in resisting the "takeover", refused to deliver crude oil to Nepco. If this was a wrong to Nepco under its contract with SOCal or otherwise, Nepco had its remedy against SOCal. Certainly the business decision by SOCal was no wrong to plaintiff, which bought no oil from SOCal.

After the nationalization by Libya, the real complaint of plaintiff is that Libya raised the price of oil. If plaintiff is able to recover from Nepco for breach of contract, then plaintiff has sustained no damage. If plaintiff is unable to recover from Nepco, plaintiff asks this Court to require defendants to pay for the oil price increases of Libya. The benefit of these increases went all to Libya; defendants received no part of the increases.

2.

The case at bar appears to be ruled by Calderone Enter. Corp. v. United Artists, 454 F.2d 1292 (2d Cir. 1971), cert. denied, 406 U.S. 930 (1972). This Court had dismissed antitrust claims on the face of the complaint (Fed. R. Civ. P. 12(b)(6)) because plaintiff had no standing to sue. The Court of Appeals affirmed, declaring it to be the law of this Circuit that ". . . in order to have 'standing' to sue for treble damages under §4 of the Clayton Act, a person must be within the 'target area' of the alleged antitrust conspiracy, i.e., a person against whom the conspiracy was aimed, such as a competitor of the persons sued." (454 F.2d at 1295)



*Opinion of the District Court*

The earlier decisions are collected in Calderone.

The complaint shows on its face that if there were a conspiracy to violate the antitrust laws the target was not plaintiff but Libya or the Persian Gulf states or all of them. Plaintiff has no standing to sue.

3.

Assuming that Lilco has standing to sue, the complaint shows that it has not been injured "by reason of" any antitrust violations (15 U.S.C. § 4).

The principle is that in a civil antitrust action the plaintiff "must establish a clear causal connection between the violation alleged and the injuries allegedly suffered". Molinas v. National Basketball Ass'n, 190 F.Supp. 241, 243 (S.D.N.Y. 1961; I.R.Kaufman, D.J.), quoted with approval in Salerno v. American League, 429 F.2d 1003, 1004 (2d Cir. 1970), cert. denied, 400 U.S. 1001 (1971).

The complaint makes it clear that the cause of Lilco's injury (if any) was the increase by Nepco of its prices, an increase which Lilco says was an unjustified breach of contract and for which Lilco is suing. If Nepco's price increase was justified under the contract, then the justification was the increase by Libya of the purchase price to Nepco, an increase which was decided upon by Libya, a sovereign state over which defendants have no control. In any event, therefore, no "causal connection", either "clear" or otherwise, is shown between the claimed violations of defendants and the claimed

*Opinion of the District Court*

injuries of Lilco.

The further principle is that damages in a civil antitrust action are allowed "only to those who have suffered some diminution of their ability to compete", that is to say, "the plaintiff must allege and prove that the illegal restraint of trade injured his competitive position in the business in which he is or was engaged". GAF Corp. v. Circle Floor, 463 F.2d 752, 757, 758 (2d Cir. 1972; emphasis in original), cert. denied, 413 U.S. 901 (1973)

*J.B.W. dismissed*

There is nothing in the complaint to show that Lilco suffered any competitive disadvantage. No such showing could be made since Lilco does not engage in competition, as its memorandum recognizes (p. 107). It is a regulated monopoly.

The claim that defendants had a monopoly and restrained trade relates to the Persian Gulf area, not to Libya. But there is no claim that anything done in the Persian Gulf area affected Lilco; on the contrary, the memorandum for Lilco seems to recognize that nothing done in the Persian Gulf area had any effect on Lilco except to supply a motive for the alleged activity in Libya.

4.

The movants have further arguments based on the act of state doctrine (Banco Nacional de Cuba v. Sabbatino, 376 U.S. 398 (1964)) and based on the principle that only the first purchaser from an antitrust violator may recover under the antitrust laws (Donson Stores Inc. v. American Bakeries Co.,



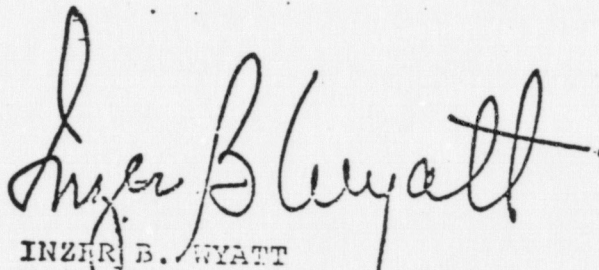
*Opinion of the District Court*

58 F.R.D. 481 (S.D.N.Y. 1973). In view of the conclusions reached, these arguments - while substantial - need not be considered.

The motion is granted. There is an express determination that there is no just reason for delay and an express direction (Fed. R. Civ. P. 54(b)) to the Clerk for the entry of separate judgments dismissing the first and second claims of the complaint in the first action (74 Civ. 2233) and the first claim of the complaint in the second action (74 Civ. 2645) for failure to state a claim upon which relief can be granted.

SO ORDERED.

Dated: New York, New York  
February 27, 1975

  
INZER B. WYATT  
United States District Judge

LILCO Judgment

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UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

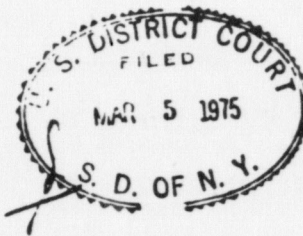
LONG ISLAND LIGHTING COMPANY,

x 74 Civil 2233(IBW)

- against -

STANDARD OIL COMPANY OF CALIFORNIA,  
TEXACO INC., MOBIL OIL CORPORATION, :  
CHEVRON OIL TRADING COMPANY and  
TEXACO OVERSEAS PETROLEUM COMPANY.

JUDGMENT



The defendants having moved the Court to dismiss the first and second claims of the complaint for failure to state a claim upon which relief can be granted, pursuant to Rule 12(b)(6) of the Federal Rules of Civil Procedure, and the said motion having come on to be heard before the Honorable Inzer B. Wyatt, United States District Judge, and the Court thereafter on February 27, 1975, having handed down its order, granting the said motion and, having made an express determination pursuant to Rule 54(b) of the Federal Rules of Civil Procedure, that there is no just reason for delay, directing the Clerk to enter judgment, it is,

ORDERED, ADJUDGED and DECREED: that the defendants Standard Oil Company of California, Texaco, Inc., Mobil Oil Corporation, Chevron Oil Trading Company and Texaco Overseas Petroleum Company, have judgment against the plaintiff Long Island Lighting Company, dismissing the first and second claim of the complaint.

Dated: New York, N.Y.  
March 5, 1975.

*Raymond F. Burghardt*  
Clerk

APPROVED:

*Inzer B. Wyatt*  
U. S. D. J. March 5, 1975



CON EDISON Judgment

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UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

74 Civil 2645 (IBW)

CONSOLIDATED EDISON COMPANY OF  
NEW YORK, INC.,

- against -

JUDGMENT

STANDARD OIL COMPANY OF CALIFORNIA,  
TEXACO, INC., MOBIL OIL CORPORATION,  
CHEVRON OIL TRADING COMPANY and  
TEXACO OVERSEAS PETROLEUM COMPANY.



The defendants having moved the Court to dismiss the first claim of the complaint, for failure to state a claim upon which relief can be granted, pursuant to Rule 12(b)(6) of the Federal Rules of Civil Procedure, and the said motion having come on to be heard before the Honorable Inzer B. Wyatt, United States District Judge, and the Court thereafter on February 27, 1975, having handed down its order, granting the said motion and having made an express determination pursuant to Rule 54(b) of the Federal Rules of Civil Procedure that there is no just reason for delay, directing the Clerk to enter judgment, it is,

ORDERED, ADJUDGED and DECREED: that the defendants Standard Oil Company of California, Texaco, Inc., Mobil Oil Corporation, Chevron Oil Trading Company and Texaco Overseas Petroleum Company, have judgment against the plaintiff, Consolidated Edison Company of New York, dismissing the first claim of the complaint.

Dated: New York, N.Y.  
March 5, 1975.

*Raymond F. Burghardt*  
Clerk

APPROVED:

*Inzer B. Wyatt*

March 5, 1975

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LILCO Notice of Appeal

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UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

----- x

LONG ISLAND LIGHTING COMPANY, : 74 Civil 2233 (IBW)

Plaintiff, :

- against - : NOTICE OF APPEAL

STANDARD OIL COMPANY OF CALIFORNIA, :  
TEXACO, INC., MOBIL OIL CORPORATION, :  
CHEVRON OIL TRADING COMPANY and :  
TEXACO OVERSEAS PETROLEUM COMPANY, :  
Defendants. :

----- x

NOTICE IS HEREBY GIVEN that Long Island Lighting Company, plaintiff above-named hereby appeals to the United States Court of Appeals for the Second Circuit from the Judgment dismissing the First and Second Claims of its complaint entered in this action on the 5th day of March, 1975.

✓ Dated: March 7, 1975.

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By Asa D. Sokolow  
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CON EDISON Notice of Appeal

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UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

----- X  
CONSOLIDATED EDISON COMPANY OF  
NEW YORK, INC.,

Plaintiff,

- against -

STANDARD OIL COMPANY OF CALIFORNIA,  
TEXACO, INC., MOBIL OIL CORPORATION,  
CHEVRON OIL TRADING COMPANY and  
TEXACO OVERSEAS PETROLEUM COMPANY,

Defendants.  
----- X

: 74 Civil 2645 (IBW)

:  
: NOTICE OF APPEAL  
:

NOTICE IS HEREBY GIVEN that Consolidated Edison  
Company of York, Inc., plaintiff above-named hereby  
appeals to the United States Court of Appeals for the Second  
Circuit from the Judgment dismissing the First Claim of its  
complaint entered in this action on the 5th day of March,  
1975.

Dated: March 7, 1975.

ROSENMAN COLIN KAYE PETSCHKE  
FREUND & EMIL

By Asa D. Sokolow  
Asa D. Sokolow  
Attorneys for Plaintiff  
575 Madison Avenue  
New York, New York 10022

Stipulation and Order Consolidating the Appeals

UNITED STATES COURT OF APPEALS  
SECOND CIRCUIT

----- x

LONG ISLAND LIGHTING COMPANY, : C/A Ref. No. T-4510  
Plaintiff-Appellant, :  
- against - :  
STANDARD OIL COMPANY OF CALIFORNIA, :  
TEXACO INC., MOBIL OIL CORPORATION, :  
CHEVRON OIL TRADING COMPANY and :  
TEXACO OVERSEAS PETROLEUM COMPANY, :  
Defendants-Appellees. : STIPULATION  
and ORDER

----- x

CONSOLIDATED EDISON COMPANY OF NEW : C/A Ref. No. T-4509  
YORK, INC., :  
Plaintiff-Appellant, :  
- against - :  
STANDARD OIL COMPANY OF CALIFORNIA, :  
TEXACO INC., MOBIL OIL CORPORATION, :  
CHEVRON OIL TRADING COMPANY and :  
TEXACO OVERSEAS PETROLEUM COMPANY, :  
Defendants-Appellees. :

----- x

IT IS STIPULATED by the undersigned that the above-entitled appeals shall be consolidated.

Dated: March 24, 1975.

ROSENMAN COLIN KAYE PETSCHKE  
FREUND & EMIL

By *Alan D. Rosenman*  
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Stipulation and Order Consolidating the Appeals

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(212) 752-6400

SO ORDERED

*BIA. Daniel Fusaro*  
J.C.A.

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Date May 2 75 2:05 PM  
LAVE, SCHOLLE, F... & HANDLER  
Attorney(s) for Texaco  
Don

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DEBEVOISE, PLIMPTON, LYONS & GATES  
By John A. Amico  
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DONOVAN LEISURE

NEWTON & IRVINE

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ASST. SECY. TEXACO Inc

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LORD, DAY & LORD  
ATTORNEYS FOR Socal